

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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	:
IN THE MATTER OF	:
	:
NISTEL, INC.,	: Case No. 03-RD-130926
	:
Respondent,	:
	:
AND	:
	:
LISA LYDECKER,	:
	:
Petitioner,	:
	:
AND	:
	:
NEW YORK STATE NURSES	:
ASSOCIATION,	:
	:
	:
Union.	:
-----X	

**NEW YORK STATE NURSES ASSOCIATION'S
REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
SECOND SUPPLEMENTAL DECISION
TO OPEN AND COUNT THE IMPOUNDED BALLOTS**

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INTRODUCTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, the New York State Nurses Association ("NYSNA" or the "Union") submits this request for review of the Regional Director's Second Supplemental Decision to Open and Count the Impounded Ballots dated March 12, 2015 (the "Decision")¹ in an election in connection with a decertification petition (the "Petition") seeking to oust NYSNA as the collective bargaining representative for the approximately 44 Registered Nurses who work for Nistel, Inc. ("Nistel" or the "Employer"), a company that provides surgical services to Kingston Hospital and Benedictine Hospital, both of which are operated by HealthAlliance of the Hudson Valley ("HealthAlliance").²

As shown below, compelling reasons exist for granting the request for review: (a) the circumstances of this case raise a substantial question of law regarding the processing of a petition when an employer is poised to cease operations and whether an employer subverts the Act when it temporarily postpones a closing simply so that a decertification vote can occur; (b) the Regional Director made a factual finding – that the Employer's operations would

¹ The Decision is attached hereto as Exhibit A.

² See Transcript of the proceedings held September 19 ("Day One Tr.") at 18-19. The Day One Transcript is attached hereto as Exhibit B. Kingston Hospital is also known as the Broadway Campus, and Benedictine Hospital is also known as the Mary's Avenue Campus. (*Id.*)

continue indefinitely – that was clearly erroneous; and (c) the Regional Director ignored the fact that the ballots cannot be immediately opened – due to “blocking” unfair labor practice charges filed by the Union that were dismissed and are on appeal – and that continuing developments dictate a re-opening of the record before ballots are opened and counted.

Specifically, the Decision is fundamentally flawed in three significant respects.

First, the Regional Director should have dismissed the Petition in light of the Employer’s imminent cessation of operations and Nistel’s delaying its closure just long enough, and for the sole purpose, so the decertification vote could take place and the ballots counted.

In April 2014, Nistel notified all of its employees that it would permanently cease operations between July 25 and August 8, 2014. Even after the Petition was filed on June 17, the Employer renewed its commitment to close by August 8 in an email to the Union on the morning of June 23. A mere four hours later, however, Nistel reversed course and emailed the Region in the afternoon of June 23 that Nistel would remain open for the “foreseeable future.”

There is no doubt that Nistel’s reversal had nothing to do with a reassessment of its business model and charting a new course for continuing its

operations for another year or more. The reversal was motivated solely to allow the decertification vote to go forward.

Nistel admits that the only reason the Employer abandoned its plan to close by August 8 was to allow the decertification vote to go forward. And when questioned by NYSNA in June as to how long Nistel would remain operating, Nistel was unable to give any details other than to deflect with “foreseeable future.”

At the hearing held on December 8, 2014, HealthAlliance, Nistel’s only customer, claimed that it plans to continue using Nistel to avoid upsetting approximately half of the nurses with disruption.

HealthAlliance now claims – through testimony offered at the hearing held on February 20, 2015 – that it will continue to use Nistel despite the fact that HealthAlliance recently signed a Letter of Intent (“LOI”) with Westchester Medical Center (“WMC”) that contemplates an affiliation deal finalized by March 31, 2015 in which WMC assumes control over HealthAlliance as its corporate parent.

When the entire record is considered (including the two prior hearings), however, HealthAlliance and Nistel’s claims are simply not credible. There is no reasonable doubt that Nistel’s closure is imminent and certain and Board law requires dismissal of the Petition.

If Nistel was remaining open only so that a decertification vote can take place, that vote has already occurred (on November 20, 2014, with the ballots impounded). All that remains is whether to open the impounded ballots, after which Nistel would undoubtedly close.

The suggestion that Nistel would remain open beyond that point is thoroughly rebutted by the undisputed facts:

(1) the very reason for Nistel's existence disappeared in 2013, when Benedictine Hospital ended its Catholic affiliation;

(2) HealthAlliance needs to reduce costs and will save significant money by closing Nistel;

(3) WMC is expected to assume control of HealthAlliance approximately March 31, 2015;

(4) WMC is looking to cut costs;

(5) no matter what happens in the ballot count, Nistel will be confronted with approximately half of its nurses being upset;

(6) HealthAlliance is aggressively proceeding with its plans to consolidate Kingston and Benedictine into a single facility, despite how disruptive and upsetting that will undoubtedly be to the nurses; and

(7) NYSNA has proposed that upon Nistel's closing each nurse can choose whether to go to Kington or Benedictine Hospital, thereby avoiding any nurse getting upset at being involuntarily sent to Benedictine.

Nistel's articulated reason for continuing operations – to let nurses have a “say” and to avoid disruption – is thus no reason at all.

Under these undisputed circumstances, the Petition should be dismissed.

Second, the Regional Director should have concluded Nistel's actions subverted the Act. In other Board cases where an employer reverses a decision to cease operations, the employer's reversal has always been based on a business decision to continue operations. Here, however, Nistel's reversal was not based on a reassessment of its business model and the pursuit of a new course for continuing its operations for another year or more. The reversal was motivated *solely* to allow the decertification vote to go forward.

Third, the Regional Director improperly ordered an immediate opening of ballots without taking into account that (a) no ballots can be opened until appeals of the dismissal of “blocking charges” filed by NYSNA are decided,³ and (b) WMC is poised to assume control of HealthAlliance's operations

³ 03-CA-133935, 03-CA-135294. Oral argument on these appeals is scheduled for March 26, 2015.

approximately March 31, 2015, at which point Nistel's continued existence is in jeopardy. Unlike the typical case where there is no reason to question whether the employer will continue operations (and thus no need for the employer to prove it intends to do so), here Nistel was on the brink of ceasing all operations by August 8, 2014 and its continuation beyond much beyond March 31, 2015 is suspect. The Regional Director therefore should have included in her Decision a directive that the record be again re-opened after the pending ULP appeals are decided and before the ballots are counted, so as to ensure that WMC has not decided to terminate Nistel. Under the unusual circumstances of this case, Nistel's continuation is too speculative to justify further processing of the Petition without further investigation.

Under these undisputed and unprecedented circumstances, the Petition should be dismissed. At the very least, the matter should be remanded so that NYSNA can develop a record – after the pending ULP appeals are decided and before the ballots are opened – regarding Nistel's "foreseeable future."

FACTS

Nistel Is Created in 2009 to Solve a Religious Problem

In 2006, New York State mandated that Kingston and Benedictine Hospitals should have a common corporate parent. This presented a distinct problem – Kingston Hospital provided abortion services, whereas Benedictine

Hospital had a Catholic affiliation and thus wanted no involvement with the provision of such services.⁴

To solve this problem, Foxhall Ambulatory Surgery Center (“Foxhall”) and Nistel were created. Foxhall would operate a new building to be constructed adjacent to Kingston Hospital where abortion (and other) services would be offered, and Nistel would provide the surgical services for Foxhall, Kingston and Benedictine.⁵ Benedictine would thus be “isolated” from abortion services.⁶

Nistel concedes the *raison d’etre* for its existence – “the Catholic issue was the sole issue that Nistel and Foxhall came into existence.”⁷

In 2009, Foxhall opened, Nistel entered into “Employee Leasing Agreements” with Foxhall, Benedictine Hospital and Kingston Hospital for Nistel to provide surgical services, and NYSNA was certified by the Region as the representative of Nistel’s nurses after a contested election.⁸

⁴ (Day One Tr. 20).

⁵ (Day One Tr. 20-21; Union Ex. 1 at Article 1).

⁶ (Day One Tr. 20).

⁷ (Day One Tr. 34) (comments of Nistel’s counsel); *see also* Transcript of hearing held December 8, 2014 (“Day Two Tr.”) 21. The Day Two Transcript is attached as Exhibit C.

⁸ (Day One Tr. 21; Union Ex. 9(a); Union Ex. 10(a)).

Nistel Is No Longer Needed in 2013

In 2013 Benedictine Hospital ended its Catholic affiliation. By the start of 2014, there was thus no longer a need for Nistel to serve as a buffer between Benedictine and the provision of abortion services.⁹

Nistel's Continued Existence Creates a Fiscal Problem in 2014

By 2013, it was clear that HealthAlliance, the corporate parent of Nistel's only two customers (Benedictine and Kingston Hospitals), was experiencing fiscal problems.¹⁰

In 2013, HealthAlliance's CEO announced that due to fiscal problems, HealthAlliance would need to close either Kingston or Benedictine Hospital and further would need to affiliate with a larger, fiscally sound partner.¹¹ As Joseph Marsicovete, the Chief Operating Officer of HealthAlliance, confirmed at the hearing on December 8, 2014, HealthAlliance has "no option" but to consolidate the two hospitals.¹²

To facilitate HealthAlliance's ability to attract a such partner, NYSNA and Benedictine Hospital agreed that when the collective bargaining agreement

⁹ (Day One Tr. 40; Day Two Tr. 21, 53).

¹⁰ Foxhall is no longer open. (Day One Tr. 19).

¹¹ (Day One Tr. 26).

¹² (Day Two Tr. 52).

(“CBA”) for the Benedictine unit (a distinct unit from the one at issue in the Petition) expired at the end of 2013, the parties would negotiate a successor agreement that would expire at the end of 2014, the expectation being that by that time HealthAlliance would have found its partner.¹³

HealthAlliance Extends Its Service Agreement with Nistel and Then Two Months Later Informs Nistel That Its Services Are No Longer Needed

In January 2014, HealthAlliance entered a two-year renewal of the “Employee Leasing Agreements” with Nistel for the provision of services at Benedictine and Kingston Hospitals, extending the agreements until January 29, 2016.¹⁴

Nonetheless, soon thereafter someone in HealthAlliance’s executive cabinet suggested that HealthAlliance could save approximately \$125,000 annually if the Hospitals terminated their use of Nistel and directly employed the Nistel nurses.¹⁵

In approximately March 2104, HealthAlliance orally informed Nistel’s CEO Dan Policastro of the decision to cease using Nistel.¹⁶ Although the

¹³ (Day One Tr. 26-27).

¹⁴ (Union Ex. 9(c), 10(c)).

¹⁵ (Day Two Tr. 20, 22). The issue of closing Nistel had actually been raised earlier, at least by October 2013. (Union Ex. 13).

¹⁶ (Day Two Tr. 24).

leasing agreements provide that “all notices . . . shall be in writing,”¹⁷ no formal notices were sent to cancel the leases,¹⁸ and Nistel did not ask HealthAlliance to comply with the requirement of written notice.¹⁹

In March 2014, Howard Estock, counsel for Benedictine and counsel for Nistel, informed NYSNA that Nistel would cease operating in the “near future.”²⁰ Either then or soon thereafter, NYSNA asked Estock why Nistel was ceasing. Estock responded that “Nistel was not an attractive feature” of the HealthAlliance system and “closing Nistel was going to be a positive thing for HealthAlliance, because it was going to make them a more attractive partner.”²¹ Estock further said that Nistel’s cessation would help save HealthAlliance money, thereby lessening its fiscal troubles.²²

¹⁷ (Union Ex. 9(a) at p.7 (Section 5.12); Union Ex. 10(a) at p.7 (Section 5.12)).

¹⁸ (Day Two Tr. 8-9).

¹⁹ (Day Two Tr. 39).

²⁰ (Day One Tr. 42).

²¹ (Day One Tr. 43-44).

²² (Day One Tr. 44).

**On April 17, Nistel Formally Announces
It Is Permanently Closing By August 8**

Nistel then began the process of winding down its operations, including the termination of its pension plan and the issuance of Worker Adjustment and Retraining Notification Act (“WARN”) notices to its employees.²³

On April 27, 2014, Nistel issued WARN notices announcing that it would permanently cease operations between July 25 and August 8, and that “the entire nursing staff will be offered employment directly by the clients Nistel currently serves.”²⁴

One month later, on May 27, 2014, Nistel confirmed to NYSNA that the Employer was still on track to cease operations by August 8.²⁵

HealthAlliance conceded at the hearing on December 8 that but for the 90-day requirement of WARN, it would have terminated Nistel prior to July 25 so as to start saving money sooner.²⁶

²³ (Day Two Tr. 23, 25).

²⁴ (Day One Tr. 46, Union Ex. 2).

²⁵ (Union Ex. 3). By May, the plan was for Nistel nurses to go directly on the payroll of Benedictine Hospital and be governed by the Benedictine Hospital CBA with some modifications. (*Id.* at pp. 2-3) (email dated May 21 at 2:51 p.m.).

²⁶ (Day Two Tr. 27-28).

**The Decertification Petition Is Filed June 17,
and HealthAlliance Rethinks Its Decision to Close**

The Petition was filed on June 17, 2014.

According to Marsicovete, HealthAlliance soon thereafter began to rethink its decision to close Nistel.

Marsicovete testified that on June 19 he had begun to think about rescinding the WARN notices when he received a communication from Nistel's Director of Surgical Services that "tempers on both sides [among the nurses] were running a bit hot" and later that she found it "tough to manage" some nurses who were upset there might not be a decertification election.²⁷

Marsicovete testified that he had also begun to conclude that the annual savings generated by Nistel's closing would be somewhat less than the originally anticipated \$125,000 due to possible increased accounting department costs at Benedictine and Kingston Hospitals when the former Nistel nurses went directly on the Hospital's payroll. Marsicovete conceded, however, that he never calculated how much less²⁸ and admitted that even if the annual savings were as great as originally thought, the savings were not "worth the cost of what was going on with the employees."²⁹

²⁷ (Day Two Tr. 30-31).

²⁸ (Day Two Tr. 31, 33-34).

²⁹ (Day Two Tr. 34-35).

Marsicovete testified that over the weekend, on June 21 and/or June 22, he discussed the matter with HealthAlliance's President David Scarpino, and on the morning of June 23 called Howard Estock to tell him to have Nistel rescind the WARN notices.³⁰ When Nistel learned that HealthAlliance wanted to rescind its oral termination of the leasing agreement (and continue as if nothing ever happened), Nistel did not object.³¹

On June 23, HealthAlliance and Nistel Reverse Course in Response to the Region's Decision to Postpone a Hearing on the Petition

Even after the filing of the Petition and the weekend discussions, it was still Nistel's stated intention to cease operations by August 8. At 9:48 a.m. on June 23, Estock confirmed this intention in an email to NYSNA, which had asked for confirmation of the closing date for Nistel, by responding "the timetable remains the same as in the WARN notices: between July 25 and August 8."³²

In an email from Field Examiner Kelly Moore at 10:19 a.m. on June 23 – about a half hour after Nistel's confirmation to NYSNA that it was

³⁰ (Day Two Tr. 32-33). Marsicovete testified that the decision to cease using Nistel was not made by HealthAlliance's Board of Directors, it was made by management. (Day Two Tr. 12-13). Indeed, on June 27, Marsicovete informed HealthAlliance's Board of the decision and the reasons for keeping Nistel open. (Union Ex. 12A, 12B).

³¹ (Day Two Tr. 39).

³² (Union Ex. 4).

permanently ceasing operations by August 8 – the Region informed the parties that a hearing on the Petition would be postponed indefinitely.³³

Less than three hours later, at 1:06 p.m., Nistel announced that it “is rescinding its decision to close its operations and will continue to operate as it has for the foreseeable future.”³⁴

Despite this announcement, Nistel’s work on terminating its pension plan – which work was begun and performed between March and June 23 – continued through July and early August.³⁵ Reversal of that termination was not completed until the fall.³⁶

On June 24, Nistel sent the bargaining unit letters that “Nistel, Inc. has determined that it will continue operations” and “is rescinding its April 17, 2014 Notice because it has decided to continue its operations for the indefinite future.”³⁷

Nistel and HealthAlliance Admit Their Reversal Was Solely Intended to Let the Decertification Vote Occur

On June 25, 2014, NYSNA representatives met with Estock and others to continue the negotiations for a successor agreement at Benedictine.³⁸

³³ (Union Ex. 5).

³⁴ (*Id.*).

³⁵ (Day Two Tr. 50-51).

³⁶ (Day Two Tr. 50).

³⁷ (Union Exs. 6, 7).

NYSNA started the meeting by asking Estock “so what happened?”

Estock replied that HealthAlliance “felt that it was important that the nurses have a chance to vote in the decertification” election.³⁹

NYSNA remarked to Estock that the decision to remain operating was not very cost efficient. Estock agreed, but said the Employer wanted the “decert[ification] vote to go forward.”⁴⁰ Estock offered no other reason for Nistel’s decision to remain operating.⁴¹

NYSNA then inquired how long Nistel would remain operating.⁴² Estock gave no definite answer, merely stating that Nistel would remain operating for the “foreseeable future.”⁴³ When NYSNA pressed Estock for clarification, the most Estock could say was that he did not expect a closing in 2014.⁴⁴

³⁸ (Day One Tr. 59, 69).

³⁹ (Day One Tr. 59-60).

⁴⁰ (Day One Tr. 60, 71).

⁴¹ (Day One Tr. 60, 70, 72-73).

⁴² (Day One Tr. 60-61).

⁴³ (Day One Tr. 62, 70).

⁴⁴ (Day One Tr. 61-62, 73-74).

Nistel's Subsequent Negotiation for a Successor Agreement Does Not Reflect an Intent to Be Operating Well Into 2015

Margaret Bachman, NYSNA's Area Director for Westchester County and the lower Hudson Valley, attended negotiations with Nistel to negotiate a successor agreement to the Nistel CBA that expired in May 2014.⁴⁵

At the first session on July 24, NYSNA presented its proposals, including proposals for economic terms. Nistel's representative, Andrew Saulitis, announced that Nistel would not discuss any matters of compensation or economic terms.⁴⁶ Nistel further refused to compensate the Nistel bargaining unit members in attendance for time they lost to participate in the July 24 session, even though these same members were paid to attend prior negotiations, before Nistel's reversal, in which the parties discussed the Nistel nurses being directly employed by Benedictine Hospital.⁴⁷ Nistel's administrator, Cherie Hanson-Rodriguez, announced that the Employer "operates at absolutely no profit and they have just enough money to make payroll." She repeated these same comments at the September 10 session.⁴⁸

⁴⁵ (Day One Tr. 75-76; Union Ex. 1).

⁴⁶ (Day One Tr. 76).

⁴⁷ (Day One Tr. 82).

⁴⁸ (Day One Tr. 83, 85).

The Hearing on September 19

At the hearing on September 19, 2014, NYSNA moved that the Region defer processing the petition in light of the pending unfair labor practice charge, 03-CA-135294.⁴⁹ The Hearing Officer denied that motion with respect to conducting the hearing.

NYSNA also sought to introduce evidence that the Employer unlawfully supported the filing of the Petition. The Hearing Officer denied the Union the opportunity to do so.⁵⁰

The Hearing Officer also granted, over the Union's objection, Nistel's motion to revoke a subpoena *duces tecum* NYSNA had served seeking various documents regarding Nistel's decision to close by August 8 and later reversal of that decision, as well as documents evincing an intent to operate beyond the next few months.

The Acting Regional Director's Decision of October 17

In a Decision dated October 17, 2014, the Acting Regional Director concluded that a question existed concerning the representation of the Nistel nurses, affirmed the revocation of the Union's subpoena *duces tecum*, and directed

⁴⁹ (Day One Tr. 8).

⁵⁰ (Day One Tr. 8-9).

a decertification election be scheduled. Thereafter, NYSNA timely sought the Board's review of the October 17 Decision.

The election took place on November 20, 2014 and the ballots were impounded.

The Board Decision and the December 8, 2014 Hearing on Remand

On November 20, 2014, the Board granted NYSNA's request for review of the October 17 Decision and Direction of Election, and remanded the matter back to the Region.

Upon remand, the Regional Director scheduled a second day of hearing on December 8, 2014, at which HealthAlliance and Nistel produced documents in response to NYSNA's subpoena *duces tecum* and the testimony of Joseph Marsicovete, the acting Chief Operating Officer of HealthAlliance since July 2014 and the Chief Quality and Human Resources Manager prior to July 2014.⁵¹

At the hearing held December 8, 2014, Marsicovete testified that even after the decertification ballots are counted, "the current plan" is to continue with Nistel, "as far as we can see and far into the future."⁵²

⁵¹ (Day Two Tr. 18-19).

⁵² (Day Two Tr. 40).

HealthAlliance Admits that All of the Original Reasons for Closing Nistel Continue to Exist

While testifying on December 8 about HealthAlliance using Nistel “far into the future,” Marsicovete made several significant concessions.

First, in the very sentence in which he states that Nistel will not close, Marsicovete qualified his comments with the (prescient) recognition that “healthcare changes dramatically” and quickly.⁵³

Second, he conceded that HealthAlliance’s finances have not improved and the \$125,000 in annual savings through Nistel’s termination is still needed.⁵⁴

Third, despite HealthAlliance’s desire to “settle things down and get back to some degree of normalcy,” Marsicovete admitted that HealthAlliance had not abandoned its plan to close the Kingston Hospital and combine it into Benedictine Hospital.⁵⁵ HealthAlliance is still “definitely aggressively” trying to do that, despite how disruptive a consolidation into a single facility might be to the nurses.⁵⁶

⁵³ (*Id.*). As shown below, only two weeks after Marsicovete testified on December 8, HealthAlliance signed a Letter of Intent on December 22 to merge with WMC.

⁵⁴ (Day Two Tr. 41).

⁵⁵ (Day Two Tr. 43).

⁵⁶ (Day Two Tr. 43).

Fourth, Marsicovete testified that as of December 8 HealthAlliance was also still pursuing a fiscally-sound partner with which to affiliate,⁵⁷ and the topic of Nistel had not yet come up because all discussions with potential partners had been at the “20,000 foot level” and HealthAlliance had not “officially partnered with anyone.”⁵⁸ There had yet to be a “nuts and bolts” discussion, during which the parties could address how closing Nistel would save approximately \$125,000 annually.⁵⁹

Fifth, Marsicovete admitted that he expects the decertification vote to be “razor thin” close, and thus Nistel will unavoidably have half of the nurses “upset one way or another,” which is “going to be a significant management problem for us going forward.”⁶⁰

HealthAlliance Signs a Letter of Intent

On December 22, 2014 – only two weeks after the close of the record on December 8 and before any decision issued, HealthAlliance signed a Letter of Intent with WMC regarding an affiliation in which HealthAlliance would “join

⁵⁷ (Day Two Tr. 46).

⁵⁸ (Day Two Tr. 49). Marsicovete testified that the discussions to date with potential partners have focused on consolidating to Benedictine Hospital, where most of the surgery is performed. (Day Two Tr. 47-48).

⁵⁹ (*Id.*).

⁶⁰ (Day Two Tr. 42).

WMC's health care system.”⁶¹ Pursuant to the LOI, the parties would engage in due diligence and negotiate a Definitive Agreement by March 31, 2015.⁶² The LOI states the Definitive Agreement will provide, among other things, that (a) WMC “will become the sole corporate member and active parent of HealthAlliance,”⁶³ and (b) the Kingston and Benedictine campuses would consolidate “as soon as possible” to the Benedictine campus.⁶⁴

The LOI was not announced publicly until early January 2015.

The Region Issues a Supplemental Decision

By decision dated December 23, 2014, the Regional Director concluded, based on the record as of December 8, that the cessation of Nistel's operations was not definite, imminent or on a date certain, and therefore ordered the impounded ballots counted.

The Region Reopens the Record

Once the LOI was announced publicly in early January 2015, NYSNA asked the Regional Director to re-open the record. Recognizing that the “due diligence” referenced in the LOI might take some time, NYSNA asked the

⁶¹ (Er. Ex. 3 at p.1). The Letter of Intent is attached as Exhibit D.

⁶² (Er. Ex. 3 at pp.1, 7).

⁶³ (Er. Ex. 3 at Section 4(a)(iv)).

⁶⁴ (*Id.*, Section 4(b)(i)).

Regional Director to re-open the record, not immediately, but rather once the appeals of the dismissal of unfair labor practice charges were decided.

Despite the request for a delayed re-opening, the Regional Director issued an Order dated February 6, 2015 re-opening the record for a hearing on February 20 for “taking additional testimony and evidence on the issue whether the Employer now has imminent and certain plans to cease its operations as a result of the announcement, after the remand hearing and the Supplemental Decision issued, that HealthAlliance, the Employer’s sole customer, and Westchester Medical Center are engaged in merger discussions.”

At the hearing on February 20, 2015, the sworn affidavit of WMC’s Vice President of Human Resources, Jordy Rabinowitz, was introduced into evidence.⁶⁵ In his affidavit, Rabinowitz states that prior to February 9, WMC was unaware of HealthAlliance’s relationship with Nistel, that the parties were engaged in due diligence, that WMC will manage HealthAlliance upon affiliation, and that once WMC assumes control of HealthAlliance’s management, WMC will look for ways to “achieve synergies, efficiencies and cost-savings.”⁶⁶

⁶⁵ (Union Ex. 17). The Affidavit is attached as Exhibit E. That statement was in response to a subpoena requested by NYSNA and issued to WMC. (Union Ex. 16).

⁶⁶ (Union Ex. 17 at ¶¶ 2, 4, 6).

Marsicovete testified that nothing in the LOI or the Rabinowitz affidavit altered HealthAlliance's decision to continue to use Nistel.⁶⁷ Marsicovete tried to emphasize the uncertainty of the precise corporate manner in which WMC would assume control of HealthAlliance,⁶⁸ and argued that even if WMC assumed control of HealthAlliance, WMC would not want to manage HealthAlliance "on a day to day basis."⁶⁹ Marsicovete also testified that HealthAlliance's decision is unchanged despite the fact that NYSNA would agree that Nistel nurses could choose whether to go to Kingston or Benedictine Hospital upon Nistel's closing (as opposed to the parties' original plan, apparently upsetting to at least some nurses, to have all Nistel nurses go on the payroll of Benedictine Hospital).⁷⁰ Finally, Marsicovete also tried to justify Nistel's continuation by speculating that "Nistel could be perfectly positioned to provide nurses for perhaps surgicenters."⁷¹

⁶⁷ (Transcript of hearing held February 20, 2015 ("Day Three Tr.") 40-41). The Day Three Transcript is attached as Exhibit F.

⁶⁸ (Day Three Tr. 36-38). It was precisely in anticipation that HealthAlliance would try to emphasize the fact that there are details to work out, that NYSNA did not ask that the record be re-opened immediately, but rather be re-opened once the appeals of the dismissal of unfair labor practice charges were decided.

⁶⁹ (Day Three Tr. 59).

⁷⁰ (Day Three Tr. 23, 41-42, 63, 67; Union Ex. 3 at pp. 2-3 (email dated May 21 at 2:51 p.m.)).

⁷¹ (Day Three Tr. 55).

Marsicovete, however, made several significant concessions on February 20 that undermined his pronouncements regarding Nistel's future.

First, he conceded that regardless of the corporate manner through which WMC assumes control of HealthAlliance, WMC will in fact have control over HealthAlliance.⁷²

Second, Marsicovete admitted that even if WMC allowed HealthAlliance to manage itself "on a day to day basis," HealthAlliance would have to adhere to a budget set by WMC.⁷³

Third, Marsicovete acknowledged that as part of WMC's due diligence, WMC had asked HealthAlliance to identify all vendors, which would include Nistel, and to provide all vendor contracts, which would include the Nistel agreements.⁷⁴

Fourth, he testified that HealthAlliance was moving quickly towards consolidating Kingston and Benedictine and was not waiting for a definite Agreement with WMC to actively pursue consolidation of the two campuses.

⁷² (Day Three Tr. 36 (conceding that if WMC had the ability to name the HealthAlliance Board, WMC would "obviously control" HealthAlliance); *id.* 38 (conceding that if current HealthAlliance Board remained in place but had a new entity controlled by WMC "put over that board," the current Board would "have to answer to someone," unlike now)).

⁷³ (Day Three Tr. 62).

⁷⁴ (Day Three Tr. 29, 43). WMC has yet to ask for more specifics regarding costs. (*Id.* 47).

According to Marsicovete, HealthAlliance would be interviewing finalist candidates for a construction manager to oversee the consolidation the last week of February.⁷⁵

Fifth, he admitted that HealthAlliance continues to “discuss interim steps to conserve cash prior to consolidation,”⁷⁶ and that HealthAlliance will have to make “draconian” cuts in service and expenses if New York State does not provide the money to finance the consolidation.⁷⁷

Sixth, Marsicovete recognized that NYSNA’s willingness to allow nurses to choose whether to go to Kingston or Benedictine Hospital upon Nistel’s closing, was “perhaps” giving the nurses “a say,”⁷⁸ which would satisfy HealthAlliance’s articulated belief that “our nurses have the right to heard,”⁷⁹ but that he had spoken to Petitioner Lisa Lydecker, who said NYSNA’s proposal was not sufficient.⁸⁰

⁷⁵ (Day Three Tr. 39, 48; Er. Ex. 4). Benedictine Hospital will have surgical suites added to handle the increased volume when Kingston Hospital closes. (Day Three Tr. 50).

⁷⁶ (Day Three Tr. 39; Er. Ex. 4).

⁷⁷ (Day Three Tr. 53-54).

⁷⁸ (Day Three Tr. 63).

⁷⁹ (Day Three Tr. 57).

⁸⁰ (Day Three Tr. 64).

Finally, Marsicovete conceded that with respect to Nistel's potential opportunity to provide nurses for surgicenters, HealthAlliance could just as easily take that opportunity and have the nurses work in surgicenters as employees of Benedictine or Kingston Hospital.⁸¹

The Region Issues a Second Supplemental Decision

By decision dated March 12, 2015, the Regional Director concluded that the record as further developed on February 20 still did not produce evidence that Nistel's closure was imminent or on a date certain. The Regional Director therefore ordered the impounded ballots counted, and did so without suggesting the need for further inquiry into Nistel's status.

ARGUMENT

I. UNDER BOARD LAW, NISTEL'S IMMINENT DEMISE MANDATES DISMISSAL OF THE PETITION

A. There Is No Question Concerning Representation, and It Serves No Useful Purpose to Direct an Election or to Open Impounded Ballots, When an Employer Will Cease Operations in Three to Four Months

In order for the NLRB to process a petition and direct an election, a question concerning representation must exist. *See Walker County Hosiery Mills*, 91 N.L.R.B. 8 (1950).

⁸¹ (Day Three Tr. 63).

As the Board observed in *Davey McKee Corp.*, 308 N.L.R.B. 839 (1992), “[t]here have been numerous Board decisions establishing that where an employer’s operations are scheduled to terminate within 3 to 4 months that no useful purpose is served by directing an election.”⁸²

B. The Decision Whether to Schedule an Election
 or to Open Impounded Ballots Cannot Rely
 Exclusively on an Employer’s Uncorroborated
 Statement of Its Intent to Continue or Cease Operations

In determining whether a question concerning representation exists, the Board does not simply accept the employer’s statement regarding its intention to continue or cease operations. Rather the Board takes into account all facts, particularly those that rebut the employer’s supposed plan.

In *Canterbury of Puerto Rico*, 25 N.L.R.B. 309 (1976), for instance, the employer argued that the petition should be dismissed and in support of that position offered into evidence a 1975 corporate resolution that all of the employer’s operations should cease within six months. The Regional Director nonetheless directed an election since the employer had that same year applied for a tax exemption for the next twelve years and had increased its employee

⁸² *Id.* at 840 (dismissing petition where the evidence demonstrated the employer would cease operations a month after the hearing and permitting petitioner to file motion to reinstate petition if the employer remains operating longer than anticipated). *See also* Decision at 3 (citing *Larson Plywood Co.*, 223 N.L.R.B. 1161 (1976)).

complement. The Board concluded that “[u]nder these circumstances ... the Employer’s stated intention to cease operations is too speculative a basis to bar an election.” *Id.*

Similarly, in *Walker County Hosiery Mills*, when the employer reversed its plan to close, the Board directed a decertification election but did not simply rely on the employer’s announcement to do so. The Board also considered the evidentiary record that the employer never took the necessary legal steps to have its corporate charter rescinded, there was a shareholder resolution that reversed a prior resolution to liquidate, and the employer increased its employee complement. *See Walker County Hosiery Mills*, 91 N.L.R.B. at 9. The Board further considered the lack of evidence that the employer’s actions were an attempt to evade the Act or subterfuge. *See id.* at n.3.

Finally, in *March Associates*, 2012 WL 1496208 (2012) Case No. 22-RC-075268, the Board denied a request for review of a decision to direct an election on April 27, despite the testimony of an employer representative that effective May 1 the employer would subcontract all bargaining unit work. The Board explained that the Regional Director was correct to reject this “bare claim” that was “unsubstantiated” and “uncorroborated.” *Id.* n.1.

NYSNA will now demonstrate that all the facts, when viewed in context, establish that Nistel's demise is imminent and certain, and that the Regional Director's conclusion to the contrary was flawed.

II. THE RECORD NEGATES ANY FINDING THAT NISTEL WILL CONTINUE OPERATIONS MUCH LONGER, AND THE REGIONAL DIRECTOR MADE THREE ERRORS IN REACHING HER CONCLUSION TO THE CONTRARY

A. The Regional Director Ignored the Sole Reason Given for Nistel's Continued Existence

There is no dispute that the Employer reversed its decision to close in August 2014, not because of a new business model, but merely so that the decertification election could proceed and the ballots be counted. The Employer claims it wants the nurses to have their "say."

It was only by improperly ignoring this important fact that the Regional Director could conclude that Nistel would be still operating in 2015 once the ballots are counted and the nurses have had their "say." As NYSNA will now show, that conclusion is contrary to the entire record.

B. The Regional Director Incorrectly Accepted Nistel's Statement About Its Future, Even Though the Assertion Is Unsubstantiated and Uncorroborated

In stark contrast to *Canterbury of Puerto Rico* and *Walker County Hosiery Mills* where the employers offered into evidence documents and testimony to substantiate and corroborate their claims regarding their future operations, there

is no evidence here to support Nistel's claim that it will operate for the foreseeable future.

Indeed, all the evidence in the record rebuts this "bare claim" by Nistel of continued operations.

First, the very reason for Nistel's existence disappeared in 2013, when Benedictine Hospital ended its Catholic affiliation. There is no record evidence that there is any reason for Nistel to continue operations.

Second, terminating Nistel will save significant money, particularly important to an enterprise that operates in the red and needs to trim costs. WMC is expected to assume control of HealthAlliance approximately March 31, 2015, and has gone on record it is looking to cut costs.

Third, no matter what happens in the ballot count, Nistel will be confronted with approximately half of its nurses being upset, given the anticipated closeness of the vote. The suggestion by HealthAlliance that continuing Nistel (so the ballots can be counted) will somehow appease all nurses is fanciful.

Fourth, HealthAlliance is aggressively proceeding with its plans to consolidate Kingston and Benedictine into a single facility, despite how disruptive and upsetting that will undoubtedly be to the nurses. The supposed justification for continuing Nistel – to avoid disruption – is thus no justification at all.

Fifth, NYSNA has proposed that upon Nistel's closing each nurse can choose whether to go to Kington or Benedictine Hospital, thereby avoiding any nurse getting upset at being involuntarily sent to Benedictine. Once the nurses have had their "say," Nistel cannot justify its continued operations on the supposed concern about letting nurses have their "say."

The Regional Director largely and incorrectly ignores most of these facts, which collectively demonstrate that Nistel's end is imminent.

C. The Regional Director Failed to Recognize that Continuing Developments Warrant the Reopening of the Record

In ordering the ballots to be counted, the Regional Director ignored the fact that the ballots cannot be immediately opened – due to "blocking" unfair labor practice charges filed by the Union that were dismissed and are on appeal. The Regional Director also failed to recognize that continuing developments dictate a re-opening of the record before ballots are opened and counted. WMC is poised to assume control of HealthAlliance, and thus in a position to terminate Nistel's contract, on or about March 31. Before concluding that Nistel will continue to exist for months beyond March 31, 2015, and thus that a question concerning representation exists, it is incumbent upon the Region to re-open the record to verify that WMC has not already decided to terminate Nistel.

III. THE RECORD DEMONSTRATES
NISTEL IS ATTEMPTING TO EVADE THE ACT

Ultimately, there is no doubt that Nistel will close in the near future.

Nistel has admitted that the decision to remain operating was not based on revised income forecasts or the acquisition of a new client. The sole reason given for its continued existence was to let the decertification election proceed. Nistel offers no reason why it would continue beyond the opening of the ballots and there is no evidence that it will continue beyond that point.

In fact, all the evidence suggests a speedy demise after the ballots are counted. Nistel's *raison d'être* ceased to exist in 2013 when Benedictine Hospital ceased its Catholic affiliation, and Nistel's continued existence presents problems for HealthAlliance's new parent WMC, which is striving to cut costs.

Although the Regional Director does not expressly say so, NYSNA allows for the possibility that she felt constrained by the lack of direct Board case law and felt forced to overlook Nistel's scheming. The Union asks that the Board not permit Nistel to succeed in orchestrating a decertification election by artificially extending its closing date.

CONCLUSION

For the foregoing reasons, the Petition should be dismissed. In the alternative, the counting of ballots should be delayed until (a) the appeals concerning NYSNA's blocking ULPs are decided and (b) the record is thereafter re-opened to confirm Nistel's continued existence, and thus a question concerning representation exists.

Dated: New York, New York
March 26, 2015

Respectfully submitted,

/s/ Joseph J. Vitale

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CERTIFICATE OF SERVICE

I, Joseph J. Vitale, certify that the above request for review, which was electronically filed this 26th day of March 2015, was served by electronic mail upon:

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EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

NISTEL, INC.

Employer

and

LISA LYDECKER

Case 3-RD-130926

Petitioner

and

**NEW YORK STATE NURSES
ASSOCIATION**

Union

**SECOND SUPPLEMENTAL DECISION
TO OPEN AND COUNT THE IMPOUNDED BALLOTS**

This decision is issued after a third hearing held on February 20, 2015 on the issue of whether Nistel, Inc. (Employer) will imminently or on a date certain cease operations, thereby precluding a question concerning representation.

Based on the evidentiary record and applicable Board law, I find that the record evidence does not demonstrate that cessation of the Employer's operations is definite, imminent or planned for a date certain and does not warrant a change to the Region's prior conclusion that a question concerning representation exists. Accordingly, I direct that the impounded ballots be opened and counted.

Background

On June 17, 2014,¹ Petitioner filed the petition in this matter seeking an election to determine whether approximately 44 registered nurses employed by the Employer wish to decertify the Union as their collective-bargaining representative. A hearing was conducted on September 19. Thereafter, on October 17, the Acting Regional Director issued a Decision and Direction of Election finding that the evidence was too speculative to conclude that the Employer's cessation of business was imminent or sufficiently certain to preclude a question concerning representation. Accordingly, the Acting Regional Director concluded that a question concerning representation existed and directed an election.

Thereafter, the Union filed a Request for Review, and on November 20, the National Labor Relations Board (Board), issued an Order remanding the proceeding to the Regional Director and denying the Union's request for a stay of the election.

On November 20, the Region conducted a secret ballot election among the Employer's registered nurses and impounded the ballots pending final resolution of the existence of a question concerning representation. On December 8, a supplemental hearing was held resulting in the issuance of a Supplemental Decision on December 23 to open and count the impounded ballots.

Pursuant to the Union's request and upon good cause shown, on February 6, 2015, the Regional Director ordered that a third hearing be held for the limited purpose of taking additional testimony and evidence on the issue of whether the announcement in January 2015 that HealthAlliance of Hudson Valley ("HealthAlliance"), the Employer's sole customer, and Westchester Medical Center ("WMC") are engaged in merger² discussions has any impact on

¹ All dates are in 2014 unless otherwise noted.

² The potential relationship, if any, between HealthAlliance and WMC will be referred to herein as an affiliation.

whether the Employer now has imminent and certain plans to cease its operations.

At the hearing, HealthAlliance Chief Operating Officer Joseph Marsicovete (Marsicovete) testified, and New York State Nurses Association (Union) submitted a sworn affidavit from WMC Vice President of Human Resources Jordy Rabinowitz ("Rabinowitz") into the record. The Employer submitted several other documents into the record as well.

Board Case Law

It is well established that the Board will not conduct an election where the employer's cessation of operations is imminent and certain. *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974). It serves no useful purpose to direct an election when an employer's operations are set to terminate within two months of the date of the representation hearing. *Hughes Aircraft Co.*, supra; *Larson Plywood Company*, 223 NLRB 1161 (1976); *General Motors Corporation*, 88 NLRB 119 (1950).

In determining whether the cessation of operations is sufficiently imminent and certain to warrant dismissal of the petition, the Board considers factors such as the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to cease operations, and whether the employees have been notified. See *Hughes Aircraft Co.*, supra; *Davey McKee Corp.*, 308 NLRB 839, 840 (1992). Mere speculation as to the uncertainty of future operations is not sufficient to dismiss the petition. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

In *Gibson Electric, Inc.*, 226 NLRB 1063 (1976), the Board, on review, directed an election be held after the Regional Director dismissed the petition finding that the employer's

operations were going to cease on a date certain. The Board found that the employer continued to operate "in full force" since the issuance of the Director's decision and that a substantial portion of the workforce would be employed long enough into the future to warrant an election. At the time the Board decision issued, there was at least four months of work remaining.

Facts

As more fully set forth in the decisions of the Acting Regional Director and the undersigned Regional Director dated October 17 and December 23 respectively, the records from the first two hearings reveal the following.

The Union is the collective-bargaining representative for approximately 44 RNs who are employed by the Employer. Pursuant to two service contracts,³ the Employer provides surgical services to HealthAlliance at Kingston Hospital (also referred to in the record as the Broadway campus) and Benedictine Hospital (also referred to in the record as the Mary's Avenue campus). For the past several years, HealthAlliance has been in the process of consolidating its Broadway and Mary's Avenue facilities into one campus in response to the New York State Berger Commission directive to combine services and become one institution or one facility would be closed. In addition, since 2013, HealthAlliance has been seeking to affiliate with a larger, fiscally-sound institution. As of the December 8 hearing, HealthAlliance has been in discussions with potential affiliates but the Employer has not been mentioned in those discussions.

In early 2014, to cut an estimated \$125,000 in costs, HealthAlliance decided to terminate its contract with the Employer. In addition, it was determined that it was no longer necessary to keep the surgical department separate from HealthAlliance because Benedictine Hospital ended its Catholic affiliation and the services provided by the Employer could be provided directly by

³ The most recent service contracts are effective January 30, 2014 through January 29, 2016 and contain a 30-day notice of termination by either party.

Benedictine Hospital. HealthAlliance and the Employer discussed the termination of their contracts and on April 17, the Employer issued WARN notices which stated that the Employer was closing its facility effective between July 25 and August 8 and that all employees would be terminated. The notices also informed the employees that the entire nursing staff would be offered employment directly by HealthAlliance. During this time period, the Union and the attorney for both HealthAlliance and the Employer were engaged in ongoing discussions regarding the hiring and placement of the Employer's employees by HealthAlliance at its Benedictine Hospital location. The record discloses that on May 27, the attorney for both HealthAlliance and the Employer sent a draft agreement to the Union regarding the Employer's anticipated closing and absorption of the Employer's unit nurses into the Benedictine Hospital bargaining unit.⁴ Also during this time period, the Employer's attorney told the Union that closing the Employer would make HealthAlliance more attractive to a potential affiliate.

On June 17, Petitioner filed the instant decertification petition. Thereafter, by letter dated June 24, the Employer notified the Union and unit employees that it was rescinding the WARN notices and intended to continue its operations for the indefinite future. The Employer, through discussions with HealthAlliance, decided to rescind the WARN notices to give the nurses an opportunity to vote. HealthAlliance's COO, Marsicovete, testified that the Employer did not want to employ disenchanted nurses and was concerned that if the nurses did not get an opportunity to vote there would be an adverse impact on patient care. In addition, Marsicovete testified that the projected savings from closing the Employer was not worth the cost of employee discontent.

⁴ It is unclear from the record whether the proffered agreement was subsequently signed. Whether or not there was an agreement regarding the fate of the unit nurses prior to the Employer's decision to close, however, is of no consequence as the Employer reversed its decision to close and the employees currently remain employed by the Employer.

February 20, 2015 Hearing

Parties' Positions

The Employer continues to assert that it plans to remain open for the foreseeable future and that the record evidence supports its claim.

The Union asserts that the Employer's closing is imminent and certain and, therefore, seeks dismissal of the petition. The Union claims that: (1) the record negates any finding that the Employer will continue operations much beyond April or May 2015; (2) it serves no useful purpose to complete the election process when the Employer will cease operations within three to four months; (3) the Regional Director cannot rely solely on the Employer's uncorroborated statement (through Marsicovete) of its intent to continue operations; and (4) the record demonstrates that the Employer is attempting to evade the Act. While, the Petitioner did not take a position on whether the Employer's cessation of operations is imminent, she urges the Regional Director to open and count the ballots.

As noted above, the purpose of the third hearing was limited to taking additional testimony and evidence on the issue of whether the Employer, as a result of the January 2015 announcement that HealthAlliance and WMC are engaged in affiliation discussions, now has imminent and certain plans to cease its operations. Accordingly, I will address the parties' arguments solely as they relate to the new evidence obtained in the February 20, 2105 hearing.⁵

Record Evidence

Documentary evidence demonstrates that on December 19, an affiliation update was presented at a HealthAlliance board meeting. The minutes of the meeting reflect that WMC had finished its first level of financial due diligence, was committed to proceeding with the process

⁵ Each of the parties' prior arguments were addressed in the Region's prior decisions. Nothing in the February 20, 2015 record changes the Region's conclusions reached in the prior decisions in this case.

and that HealthAlliance and WMC had drafted a non-binding letter of intent to affiliate. The minutes also reveal that Marsicovete reported on the consolidation of the two campuses. One of the bullet points in the minutes references meeting with all departments to discuss potential interim steps to conserve cash prior to consolidation. There is no reference to the Employer in the minutes.

On December 22, HealthAlliance and WMC entered into a letter of intent to affiliate whereby HealthAlliance would join WMC's health care system. The letter of intent provides that the parties will engage in due diligence and negotiate a "definitive agreement" by March 31, 2015. The letter of intent acknowledges HealthAlliance's intent to consolidate its two campuses (Benedictine and Kingston) into one. Again, there is no reference to the Employer.

Documentary evidence also includes minutes from HealthAlliance board of directors meetings held on January 7 and 30, 2015. The minutes contain no reference to the Employer.

Rabinowitz testified in his affidavit that on January 5, 2015, WMC publicly announced that it had signed a letter of intent regarding an affiliation that would result in WMC becoming the sole corporate member of HealthAlliance, that the parties would "engage in diligence"⁶ prior to negotiating and signing any definitive agreement, and that any agreement arising out of the proposed affiliation would be subject to conditions and regulatory approvals. Rabinowitz further stated in his affidavit that before he received the Union's February 9, 2015 hearing subpoena, WMC was unaware of any relationship between HealthAlliance and the Employer. Rabinowitz also testified in his affidavit that although WMC would manage HealthAlliance after the affiliation, if any, HealthAlliance would continue its human resources function, day-to-day supervision of employees, labor relations and collective-bargaining functions. Finally, Rabinowitz acknowledged that if there is an affiliation, WMC will look for ways to achieve

⁶ This term is a quote from Rabinowitz' affidavit that is part of the record.

synergies, efficiencies and cost savings. He stated in his affidavit that at this point in time, WMC holds no view as to whether the Employer would be affected post-affiliation.

Marsicovete also testified about the ramifications of the consolidation of Benedictine and Kingston campuses and any affiliation between HealthAlliance and WMC. Marsicovete testified that if the affiliation occurs, WMC will be the sole corporate member of HealthAlliance, but that as of the hearing date, no final determination was made regarding the composition of the post-affiliation governing structure or how involved WMC would be in deciding HealthAlliance's operating budget. He also testified that, in spite of the anticipated affiliation between HealthAlliance and WMC, and the Union's proposal in October 2014 to allow the Employer's unit nurses the opportunity to choose whether they want to go to Benedictine Hospital or Kingston Hospital,⁷ HealthAlliance's contractual arrangement with the Employer and the Employer's decision to remain open for the indefinite future remains unchanged.

Marsicovete testified that as part of the due diligence set forth in the letter of intent, in January 2015, HealthAlliance turned over all of its financial information to WMC, including contracts it has with vendors. Marsicovete had no direct knowledge whether its contract with the Employer was among those provided to WMC. He also testified that WMC did not ask for the costs associated with any of the contracts. As to timing, Marsicovete testified that even if the affiliation occurs by the closing date set forth in the letter of intent (March 31, 2015), it must be approved by New York State Department of Health, and possibly the Federal Trade Commission

⁷ The record reveals that in October 2014, the Union presented a proposal to HealthAlliance that would provide for the Employer's unit nurses to choose the hospital to which they would transfer. As later addressed herein, the Union argues that its proposal, if accepted by HealthAlliance, could alleviate HealthAlliance's concern about employee discontent over not having the opportunity to vote in an election to determine if they want to be represented by the Union, because it would allow employees to decide whether they wanted to transfer to Benedictine, where the nurses are represented by the Union, or to Kingston, where they are not.

if there is a concern about restraint of trade, a process that he speculated could take a year or years.

Marsicovete testified that it is a good business decision to keep the Employer open even if HealthAlliance affiliates with WMC, because the savings are miniscule compared to the dissension caused among the nurses when they previously announced closing. In addition, he noted that HealthAlliance plans to add some surgical suites to “hopefully handle increased surgical volume, which is what the Nistel nurses do.” He further testified that “the way healthcare is going to change, Nistel could be perfectly positioned to provide nurses for perhaps surgicenters....”

Application of Board Law to this Case

In concluding that the additional record evidence is insufficient to alter the Region’s prior decisions that the closure of the Employer’s operations is not sufficiently imminent, I rely on the following.

With regard to the Union’s argument that the record negates a finding that the Employer will continue operations much beyond April or May 2015 and, therefore, it would serve no useful purpose to open and count the impounded ballots, I find, contrary to the Union’s assertion, that the record provides no testimony or documentary evidence that the Employer will cease to operate in April or May 2015 or shortly thereafter. The Union claims that the Employer on June 23, 24 and 25, and December 8, 2014 and February 20, 2015 hedged each of its announcements that it will continue operations, by qualifying it with either “for the foreseeable future” or “for the indefinite future.” The Union argues in its brief submitted after the second hearing in December, that the record negated a finding that the Employer will continue operations much beyond the start of 2015. It is now the beginning of March 2015, more than

eight months after the petition was filed, and over three months since the ballots were cast. The Employer is still operating and there is no record evidence from the February 20, 2015 hearing that its closing is imminent or scheduled for a certain date. All of the unit employees remain employed by the Employer and the record reveals no evidence that the situation will change if HealthAlliance and WMC affiliate or when the consolidation of the Benedictine and Kingston campuses is complete. There is no record evidence that the consolidation of Benedictine and Kingston will result in the Employer's closure. *Gibson Electric, Inc.*, 226 NLRB 1063 (1976) (Board directed an election because the employer's initial job completion date was inaccurate, there was no date certain for closure, and the full complement of employees continued to be employed by the employer.)

The record contains speculative evidence from both parties regarding what may happen to the Employer in the future. HealthAlliance COO Marsicovete speculated that the Employer could be perfectly positioned to provide nurses for surgicenters and, therefore, the Employer could remain operational indefinitely. There is no record evidence, however, that HealthAlliance has any "surgicenters" at the present time. The Union speculates that if WMC takes control of HealthAlliance, it will look to cut costs and close the Employer's operations because it is a cost-savings to HealthAlliance. Rabinowitz testified in his affidavit, however, that WMC had no knowledge that the Employer was a HealthAlliance contractor until it was served with the Union's hearing subpoena on about February 9, 2015, and noted that WMC has no view as to whether or how the Employer would be affected post affiliation. Marsicovete testified that nothing has changed in spite of the anticipated affiliation with WMC and the Union's proposal to allow the Employer's unit nurses the opportunity to choose whether they

wish to go to Benedictine Hospital or Kingston Hospital.⁸ HealthAlliance has not altered its decision to continue to use the Employer's unit nurses for surgical services. Although the letter of intent contemplates March 31, 2015 for the affiliation of HealthAlliance and WMC, to date, there are still many unanswered questions regarding how the affiliation will proceed, including the governing structure and, in particular, what affect, if any, it will have on the Employer's continued operations.

The record is clear that as of February 18, 2015, the date of Rabinowitz' sworn statement, the parties had not discussed any impact the proposed affiliation might have on the Employer. Further, the record demonstrates insufficient evidence that the consolidation of Benedictine and Kingston Hospitals will cause the Employer to close, at all, much less imminently or on a certain date.

The Union claims that the Employer's statements about its future are unsubstantiated, uncorroborated and rebutted by the record evidence. I find however, that the record discloses more than uncorroborated statements that the Employer intends to remain open for the foreseeable future. The evidence discloses that the subsequent actions of the Employer and HealthAlliance are consistent with the Employer's plan to remain open for the foreseeable future. Specifically, since the Employer rescinded the WARN notices in June 2014, no date certain for cessation of operations has been announced to the employees, the Union, or the HealthAlliance board of directors. Eight months later, all of the unit employees remain employed by the Employer. See *Walker County Hosiery Mills*, 91 NLRB 8 (1950) (Board

⁸ As stated above, the Union argues that its October 2014 proposal alleviates HealthAlliance's concern about employee discontent over not having the opportunity to vote. Therefore, one of the reasons testified to by Marsicovete for rescinding the WARN notices, no longer exists. However, this does not alter the fact that at the time the decision was made, this was a consideration. Since there is no evidence in the record that the Union's proposal has been accepted by the Employer, the impact of the proposal is unknown and this evidence does not establish that the Employer intends to cease operations on a certain date or imminently.

ordered an election be held because the employer had resumed operations, recalled laid-off employees and stockholders had rescinded the resolution to dissolve the corporation).

Finally, I find that, in addition to the fact that the parties never discussed the Employer's future, the testimony of Marsicovete and affidavit testimony of Rabinowitz regarding WMC and HealthAlliance's future plans to engage in due diligence to negotiate and sign a definitive agreement, and that any agreement arising out of the proposed affiliation would be subject to conditions and regulatory approvals which would take an unspecified amount of time, further supports a finding that there is no definite plan at this time for the Employer to cease operations in the near future. Further, even assuming that the affiliation of HealthAlliance and WMC takes place on April 1, 2015 or soon thereafter, as planned, there is no record evidence that the affiliation will result in the termination of the contracts with the Employer, resulting in the Employer's closure.

Based on the foregoing and the record evidence from three hearings, I find that the Union's assertion that the Employer will cease operations is too speculative to bar an election. *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

Conclusion Regarding Cessation of Employer's Operations

In determining that a question concerning representation exists, I find that the additional evidence introduced at the February 20 hearing is insufficient to conclude that the Employer's cessation of business is imminent or certain. There is no persuasive evidence to justify depriving the bargaining unit employees of their right to an election.

CONCLUSIONS AND FINDINGS

Based upon the entire record,⁹ in this matter and in accordance with the discussion above, I find and conclude as follows:

⁹ The Union and Employer filed post-hearing briefs which have been duly considered.

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The Employer and the Union's most recent collective-bargaining agreement covering the employees at issue herein was effective from June 1, 2012 through May 31, 2014. As of the date of the February 20, 2015 hearing, no subsequent collective-bargaining agreement was negotiated.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time and per-diem registered nurses employed by the Employer at Benedictine Hospital, Kingston Hospital, and Foxhall Ambulatory Surgery Center; excluding nurse managers, the clinical coordinator, the OR manager, the ADS PACU manager, PST manager, the director of nursing, guards, and all other professional employees and supervisors as defined in the Act, and all other employees.

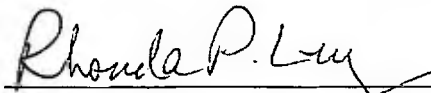
There are approximately 44 employees in the bargaining unit found appropriate herein.

Inasmuch as an election was conducted and the ballots impounded, I conclude that the impounded ballots should be opened and counted at a time and place to be designated by the Region.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT, March 26, 2015. The request may be filed electronically through the Agency's web site, www.nlr.gov,¹⁰ but may not be filed by facsimile.

DATED at Buffalo, New York this 12th day of March, 2015.



RHONDA P. LEY, Regional Director
National Labor Relations Board - Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202-2465

¹⁰ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

EXHIBIT B

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NISTEL, INC.,

Case No. 03-RD-130926

Respondent,

And

LISA LYDECKER,

Petitioner,

And

NEW YORK STATE NURSES
ASSOCIATION,

Union.

The above-entitled matter came on for hearing pursuant to Notice, before GREG LEHMANN, Hearing Officer, at the Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, in Hearing Room 352, Albany, New York, on Friday, September 19, 2014, at 11:00 a.m.

1 On behalf of the Employer:

2

3 HOWARD G. ESTOCK, ESQ.

4 Clifton Budd & DeMaria, LLP

5 The Empire State Building

6 350 Fifth Ave., 61st Fl.

7 New York, NY 10118

8

9 On Behalf of the Petitioner:

10

11 LISA LYDECKER, Pro Se

12 29 Elisa Villa Dr.

13 Saugerties, NY 12577

14

15 On Behalf of the Union:

16

17 JOSEPH J. VITALE, ESQ.

18 JONATHAN HARRIS, ESQ.

19 Cohen, Weiss & Simon, LLP

20 330 West 42nd St.

21 New York, NY 10036-6979

22 212-356-0238

23 jvitale@cwsny.com

24

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Thomas Darby	17	61	--	--	--
Katie Dannible	68	74	--	--	--
Margaret Bachman	75	85	86	--	--

	E X H I B I T S		
	EXHIBIT NUMBER	IDENTIFIED	RECEIVED
2	Board's		
3	B-1(a) through (o)	6	6
4	B-2	6	7
5			
6	Union's		
7	U-1	15	16
8	U-2	46	47
9	U-3	49	51
10	U-4	53	53
11	U-5	54	54
12	U-6 & 7	56	58
13			

P R O C E E D I N G S

(Time Noted: 11:24 a.m.)

HEARING OFFICER LEHMANN: On the record.

Alright. The hearing will be in order. This is a formal hearing in the matter of Nistel, Inc. as the Employer, and Lisa Lydecker as the Petitioner and New York State Nurses Association the Union in case number 03-RD-130926 before The National Labor Relations Board. The Hearing Officer appearing for The National Labor Relations Board is Greg Lehmann.

All parties have been informed of the procedures at formal hearing before the Board by service of a statement and (sic) standard procedures with the notice of hearing. I have additional copies of this statement for distribution if any party wants more. Will counsel please state their appearances for the record? For the Union?

MR. VITALE: Joseph Vitale from the law firm of Cohen, Weiss and Simon, LLP for the New York State Nurses Association. And with me today is my colleague Jonathan Harris.

HEARING OFFICER LEHMANN: Okay. And for the Employer?

MR. ESTOCK: Yeah. Howard Estock, Clifton, Budd and DeMaria representing Nistel.

HEARING OFFICER LEHMANN: Alright. And for the Petitioner? You want to go ahead and state your name?

MS. LYDECKER: Lisa Lydecker.

HEARING OFFICER LEHMANN: Okay. Are there any other

1 appearances? Let the record show no response. Are there any
2 other persons, parties or labor organizations in the hearing
3 room who claim an interest in this proceeding? Let the record
4 show no response.

5 I now propose to receive the formal papers. They have
6 been marked for identification as Board's exhibit 1(a) through
7 1(o) inclusive, 1(o) being an index and description of an
8 entire exhibit. The exhibit has already been shown to all
9 parties. Are there any objections to the receipt of these
10 exhibits or of this -- or Board's exhibit 1 into the record?

11 (Board's B-1(a) through (o) identified)

12 MR. ESTOCK: No objection.

13 HEARING OFFICER LEHMANN: Mr. Vitale?

14 MR. VITALE: No.

15 HEARING OFFICER LEHMANN: Alright. Hearing no objection
16 the formal papers are received in evidence. The parties to
17 this proceeding have executed and I have approved the document
18 which is marked as Board exhibit 2. That exhibit contains a
19 series of stipulations including among others that the Union is
20 a labor organization within the meaning of the Act, there is no
21 contract bar and the Employer meets the jurisdictional
22 standards of the Board. Are there any objections to the
23 receipt of Board exhibit 2?

24 (Board's B-1(a) through (o) received in evidence)

25 (Board's B-2 identified)

1 MR. ESTOCK: No objection.

2 MR. VITALE: No objection.

3 HEARING OFFICER LEHMANN: Okay. No objection? Hearing no
4 objection Board exhibit 2 is received into evidence. At this
5 time are there any prehearing motions made by any parties that
6 need to be addressed at this time? I know there is a subpoena
7 or there was a subpoena that was issued by the Union on
8 Thursday.

9 (Board's B-2 received in evidence)

10 MR. VITALE: I personally served on Thursday, yes.

11 HEARING OFFICER LEHMANN: And that was --

12 MR. VITALE: The 18th.

13 HEARING OFFICER LEHMANN: -- yesterday. So that --

14 MR. VITALE: Yeah, September 18th.

15 HEARING OFFICER LEHMANN: September 18th 2014. And the
16 Employer has filed a petition to revoke the subpoena duces
17 tecum, is that correct Mr. Estock?

18 MR. ESTOCK: Correct.

19 HEARING OFFICER LEHMANN: Alright. And at this time I am
20 going to reserve ruling on the petition or on the petition to
21 revoke, until I hear some testimony in this matter. Are there
22 any motions to intervene in these proceedings to be substituted
23 or submitted to the Hearing Officer at this time? Are the
24 parties aware of any other employers or labor organizations
25 that have an interest in this proceeding?

1 MR. VITALE: No. The answer -- Joe Vitale. The answer is
2 no. I did want to -- before we went onto the record I had
3 indicated that I was going -- there was another motion. In
4 addition to the Employer's motion concerning the revocation of
5 the subpoena, there was also -- I would like to formally move
6 to -- that there be a deferral of processing this petition, in
7 light of the pending unfair labor practice charge filed by the
8 Association numbered C -- I'm sorry, 3-CA-135294.

9 HEARING OFFICER LEHMANN: Okay. And at this time we're
10 going to proceed with the hearing and that may be addressed
11 later; the deferral issue. Okay? But today we're going to
12 proceed with the hearing, and move forward and take witnesses.
13 Are the parties aware of any employers or labor organizations
14 that have an interest in this proceeding? I know Mr. Vitale
15 said no. Hearing no --

16 MR. ESTOCK: No.

17 HEARING OFFICER LEHMANN: Alright. Hearing no response --
18 the correct name of the parties, Mr. Vitale?

19 MR. VITALE: I'm actually -- I really am trying to just
20 clear away the material so we can get in some -- the
21 preliminary matters. I think just I also wanted to indicate --
22 and I think it's in response to your suggestion that the
23 Union's motion to defer is denied, at least with respect to
24 proceeding with the hearing today. And in light with
25 proceeding to the hearing today I had indicated before off the

1 record that one of the things I wanted to -- evidence I wanted
2 to present at today's hearing was the evidence regarding
3 whether there was employer support of the filing of the decert
4 petition. And I know that you, off the record, indicated
5 whether you had a view as to whether that was appropriate grist
6 for today's mill. And I thought maybe we should address that
7 now on the record?

8 HEARING OFFICER LEHMANN: That is correct. And I -- as I
9 indicated to you off the record in our off the record
10 discussion that that -- this not the appropriate forum for that
11 and I will not take any evidence on that issue. Okay. On the
12 Union's issue there. The issues -- and I know we've had this
13 discussion off the record, but Mr. Vitale I would like, at this
14 time, to -- for you to state the Union -- the issues for this
15 hearing. Besides the two that you've --

16 MR. VITALE: Yeah, yeah, yes.

17 HEARING OFFICER LEHMANN: -- raised already there is a
18 third issue.

19 MR. VITALE: The third issue is whether there is a genuine
20 question concerning representation. And under board law, the
21 Board does not process petitions when an employer is poised to
22 go out of business. And we have evidence here that -- and
23 somewhat irrefutable that earlier this year the Employer was
24 poised to go out of business.

25 The Employer had issued WARN notices to all of its

1 employees in April of this year that come July they were going
2 to cease operations. And we even have representations that the
3 -- from the Employer's representative, after the filing of the
4 decert petition in this case on June 17th, that the plans were
5 still to cease operations and to go forward with the WARN
6 notices. And it was only upon the Region's determination, I
7 think about a half hour later after those assurances that the
8 company was going forward with the WARN notices, when the
9 Region indicated that they were going to defer processing of
10 the decert petition, in light of the outstanding WARN notices,
11 within I think an hour or two the Employer told the Board no,
12 we're going forward with our operations. We're going to
13 rescind the WARN notices.

14 Given that history, I think it's incumbent upon the Region
15 to develop a factual record to confirm that there's a genuine
16 question concerning representation that there's a genuine
17 certainty that the company is going to be existing as of
18 February 2015. The Board has a practice of not processing
19 petitions when employers are about to go out of business within
20 the next three to four months. And we have evidence that the
21 Employer's decision to rescind its WARN notices and its
22 assurances that it's going to remain operating for the
23 foreseeable future, they are not able to quantify.

24 And I'm not talking about two years from now. I'm not
25 talking about three years from now. I'm talking about they

1 have not been able to quantify that they're still going to be
2 in business at any point in 2015.

3 But more importantly, that the sole reason for why they
4 rescinded the WARN notice was to allow the decert petition to
5 go forward. And that is -- simply does not raise a genuine
6 question concerning representation where the Employer is going
7 to go out of business, but has just delayed it for the sole
8 purpose of letting a decert petition go forward. And so it's
9 on that basis that we don't think that there should be a -- the
10 decert petition should go forward. Petition should be
11 dismissed, because there's not a genuine question concerning
12 representation.

13 HEARING OFFICER LEHMANN: Okay, thank you. Mr. Estock,
14 would you like to respond to that?

15 MR. ESTOCK: Only to the extent to note that the evidence
16 that counsel has referred to was covered in the first unfair
17 labor practice charge that was filed after the petition to
18 decertify was filed. And I'm sorry, I don't remember the case
19 number on that. I can get it obviously.

20 But the same facts were put before the Board and the
21 declaration representative I think was me that counsel refers
22 to. And that was spelled out in our position letter to the
23 Board on that unfair labor practice. So these are not new
24 facts.

25 They are facts that we have put before the Board and we --

1 the corporation has made public its position that it intends to
2 stay open for the foreseeable future. I don't know what else
3 the Board would require of a Employer and a decertification
4 petition to stay. If the world ends tomorrow we're not going
5 to be in business the day after, but our intention is to stay
6 in business. I'll be interested to see what evidence counsel
7 has that refutes that, other than that which is already on the
8 record and which has been dealt with by the Board in the first
9 unfair labor practice.

10 HEARING OFFICER LEHMANN: Okay. And I would -- Mr.
11 Vitale, please?

12 MR. VITALE: Just let the record note I raised my hand and
13 was recognized by the Hearing Officer. Just very briefly,
14 because I think will be helpful as we go forward and develop
15 the record, as an initial as you have pointed out at least
16 once, we're here in connection with a decertification petition.
17 The fact that the Board may have come to the conclusion that
18 there was not an unfair labor practice in the Employer's
19 conduct is a separate and distinct inquiry as to whether or not
20 there's a genuine question concerning representation.

21 And with respect to counsel's argument that well, we've
22 stated foreseeable future. What else should you expect? Well,
23 this is not the usual situation where it's a regular petition
24 and the employer -- you know, there's very good reason to
25 require more in this case. And the very good reason, which we

1 will develop factually, is that the Employer has gone on record
2 that they were going to close and that the only reason they
3 have rescinded that decision to close is to allow the election
4 to go forward.

5 It's -- there is no evidence whatsoever that they have
6 rethought their business model and they plan on now operating
7 any time beyond the processing and the conduct of a decert
8 petition. And with respect to that, that is why I think it is
9 very important that the subpoena not only (sic) be revoked but
10 that the Association NYSNA --

11 HEARING OFFICER LEHMANN: You mean the petition?

12 MR. VITALE: No, no, no. The subpoena not be revoked,
13 because given the context of what we have here where the
14 Employer has gone on record saying they're closing in July
15 2014, gone on record post-filing of a decert petition that
16 they're still closing July 2014, then immediately reversing
17 their decision solely on the grounds that they want the decert
18 petition to be processed and the vote to be conducted, under
19 those circumstances it is the Association's view that the
20 Employer has an obligation to do more than just say I said
21 foreseeable future. What else do I need to do? What you need
22 to do is to provide the documents requested by the subpoena
23 that would go directly to the question about how foreseeable
24 and how much of a future are we talking about?

25 HEARING OFFICER LEHMANN: But after reading board law, and

1 you've cited to board law a few times, I think it's clear that
2 the Board has consistently held that it would not conduct an
3 election at a time when the permanent layoffs is imminent and
4 certain. But the Union in this case has the burden of showing
5 that the closure is imminent and there's date certain. And --

6 MR. VITALE: And -- well, let me -- two things. First, I
7 think I can say it's certain and imminent when the Employer has
8 said they only delayed their closure long enough for a decert
9 to be taken. That I think satisfies the requirement for
10 certainty and imminence. And even if the Board were not to
11 conclude that the Union has satisfied certainty and imminence
12 of closure in whatever, three to four months, given the
13 particular circumstances of this case where you have an
14 Employer reversing its decision solely based upon the filing of
15 a decert petition, I argue that the board law should be that
16 the Employer has a greater burden in that case to come forward
17 to substantiate these claims that it's in fact going to stay
18 open, you know, for six, to 12 to 18 months, not just simply as
19 they've gone on record at a negotiation session, simply to
20 allow the decert election to be held.

21 HEARING OFFICER LEHMANN: Okay. It think the issues are
22 fleshed out pretty well at this point. So we're going to take
23 witness testimony. Before we go there though, there is a
24 collective bargaining history here? The parties --

25 MR. ESTOCK: There is.

1 HEARING OFFICER LEHMANN: -- have had a collective
2 bargaining -- an expired collective bargaining agreement. My
3 understanding is that the parties' last collective bargaining
4 agreement was effective June 1, 2012 through May 31st 2014, is
5 that correct?

6 MR. ESTOCK: I believe that's correct.

7 HEARING OFFICER LEHMANN: Okay. Mr. Vitale?

8 MR. VITALE: And with your permission I'd actually --
9 whether now or later, actually offer and have them marked.

10 HEARING OFFICER LEHMANN: That's fine. And this is
11 Employer 1?

12 MR. ESTOCK: No, not --

13 MR. VITALE: NYSNA.

14 MR. ESTOCK: -- Employer 1. NYSNA 1, yeah.

15 HEARING OFFICER LEHMANN: Union 1?

16 MR. VITALE: Yes.

17 HEARING OFFICER LEHMANN: Alright. So Mr. Vitale, can you
18 please identify Union 1 --

19 MR. VITALE: Oh, I'm sorry.

20 HEARING OFFICER LEHMANN: -- and then we'll --

21 MR. VITALE: Yes. I have asked that we mark the
22 collective bargaining agreement between Nistel and the New York
23 State Nurses Association that was effective for the period June
24 1st 2012 through May 31st of this year.

25 (Union's U-1 identified)

1 HEARING OFFICER LEHMANN: Any objection?

2 MR. ESTOCK: Yes. I don't see that the record needs to
3 have this document in it, other than the possible end date of
4 the agreement would be the end. We've stipulated to that I
5 believe. So I believe that this document -- I believe it is
6 what it is --

7 HEARING OFFICER LEHMANN: Right.

8 MR. ESTOCK: -- but it's not relevant.

9 HEARING OFFICER LEHMANN: Okay. I'm going to let it in.
10 Or do you have any objection?

11 MS. LYDECKER: No.

12 HEARING OFFICER LEHMANN: Okay. I'm going to let it in.
13 Union's exhibit 1 is received. Are there any petitions pending
14 in other regional offices involving the facilities of the
15 Employer?

16 (Union's U-1 received in evidence)

17 MR. ESTOCK: No.

18 HEARING OFFICER LEHMANN: There any aware of that -- is
19 anyone aware of -- Mr. Vitale?

20 MR. VITALE: No.

21 MR. ESTOCK: No.

22 HEARING OFFICER LEHMANN: Okay. So the Union's going to
23 present their first witness?

24 MR. VITALE: Yes. Tom? Thomas Darby.

25 HEARING OFFICER LEHMANN: You want to raise your right

1 hand, Mr. Darby?

2 Whereupon,

3 THOMAS DARBY

4 Having been first duly sworn, was called as a witness and
5 testified herein as follows:

6 HEARING OFFICER LEHMANN: Alright. Have a seat. State
7 your name -- full name for the record, please.

8 THE WITNESS: Thomas Darby.

9 HEARING OFFICER LEHMANN: You want to spell your last
10 name?

11 THE WITNESS: D-A-R-B-Y.

12 HEARING OFFICER LEHMANN: Mr. Vitale, you may --

13 MR. VITALE: Thank you.

14 DIRECT EXAMINATION

15 BY MR. VITALE:

16 Q Mr. Darby, do you have any position with the Union at this
17 time?

18 A Yes, I'm a -- my title is labor representative. I
19 primarily negotiate contracts.

20 Q And how long have you been a labor representative?

21 A 1981.

22 Q And in connection with your serving as a labor
23 representative for NYSNA, do you have any responsibilities
24 concerning Nistel?

25 A I negotiated the first contract.

1 Q What is Nistel?

2 A Nistel is a for profit staffing agency.

3 Q And is there a particular staff that they provide?

4 A So they provide the surgical services -- registered nurse
5 surgical services. Some other than registered nurses, but
6 basically the surgical services for HealthAlliance's -- the
7 locations being what was the Kingston Hospital and the
8 Benedictine Hospital. And also now there is another entity,
9 Foxhall, that they provide the staff for that as well.

10 Q Okay. You -- in terms of nomenclature it be helpful to
11 get this resolved. You said what was once known as the
12 Kingston facility. What is it known as now?

13 A I think it's the Broadway -- HealthAlliance Broadway
14 campus.

15 Q And Benedictine is now known as?

16 A Is the Mary's Avenue campus.

17 MR. VITALE: Okay. With everyone's understanding, I think
18 as we go forward we're going to routinely refer to them as
19 Kingston and Benedictine.

20 MR. ESTOCK: Please, yes.

21 MR. VITALE: As opposed to the -- figuring out which
22 campus is which.

23 MR. ESTOCK: Right.

24 HEARING OFFICER LEHMANN: And is Fox -- are you getting to
25 Foxhall?

1 MR. VITALE: Oh. And we're going to discuss Foxhall --

2 HEARING OFFICER LEHMANN: Okay.

3 MR. VITALE: -- as well, yes.

4 BY MR. VITALE:

5 Q And I'm sorry. So is Nistel currently providing surgical
6 services in connection with Foxhall?

7 A As far as I know Foxhall isn't operating.

8 Q So approximately how many nurses are in the bargaining
9 unit?

10 A 44.

11 Q And Nistel, in the provision of these services to what
12 we're going to call Kingston and Benedictine, do you know if
13 there is any written agreements concerning the provision
14 between Nistel and Kingston or Nistel and Benedictine
15 concerning those --

16 A There were contracts that -- where -- that Nistel had with
17 Benedictine, with Kingston and with Foxhall that, you know, set
18 forth the relationships that they would be providing the
19 staffing -- surgical staffing to those institutions.

20 Q And have you ever seen those contracts?

21 A I saw those contracts when we first started doing
22 negotiations back like in 2009.

23 Q Okay. And did those contracts have any provisions for
24 termination?

25 A 30 days.

1 Q So let's just talk for a second about Kingston and
2 Benedictine. Are they currently commonly owned or are they
3 separately owned?

4 A They're commonly owned or operated by the HealthAlliance.

5 Q Okay. And could you explain how that came about?

6 A So in 2006 or 7 the Berger Commission, New York State,
7 told those two institutions that they needed to combine their
8 services or become one institution or they were going to close
9 one of them. So they were forced to merge and --

10 Q Did that create any problems; the Berger Commission?

11 A Right. So the problem that was created had to do with
12 abortion. Benedictine being a Catholic institution, Kingston
13 not, abortions were being done on the Kingston campus, were not
14 being done at Benedictine. That was not -- so any merging
15 between those two was totally unacceptable to Benedictine.

16 So they had to come up with a solution to isolate
17 Benedictine from the provision of abortions. And they did that
18 by establishing another entity, which they called Foxhall,
19 which was like a separate not for profit corporation I suppose.
20 And then they -- Benedictine didn't want to be associated with
21 the staff of that in any way.

22 So they agreed that Nistel would come into effect. You
23 know, be -- and Nistel would be the staffing agency. And they
24 would take these surgical services nurses from Benedictine and
25 from Kingston, put them into this Nistel staffing agency and

1 that -- so that for profit staffing agency, Nistel, would
2 provide the staff for surgical services for Benedictine, for
3 Kingston and for Foxhall. And that way Benedictine could say
4 they have no connection --

5 Q And --

6 A -- to that.

7 Q -- when was it approximately that Foxhall and Nistel began
8 those operations?

9 A 2009.

10 Q And what if anything was NYSNA involvement in 2009?

11 A So in 2009 we were -- we had already been designated as
12 representatives -- you know, to represent the RNs at
13 Benedictine. We had actually begun our negotiations for
14 Benedictine and then the employer told us that these surgical
15 services nurses that we had -- that we presently represented
16 were no longer going to be in our bargaining unit. They were
17 going to be put into this Nistel company.

18 So that went forward and then we went and organized the
19 nurses who worked for Nistel. And there was an election we
20 won. And so then we represented them as well.

21 Q Okay. So you explained that the Berger Commission created
22 a problem. As of -- once 2009 has come around you got Foxhall
23 created, and Nistel created and NYSNA is the representative.
24 Is that the end of problems?

25 A No. Well, the negotiations were very contentious. Both

1 places took about three years or over three years just to get a
2 contract. And there was constant, it seemed like, fiscal
3 problems. The merging of the two institutions was very
4 difficult. So there were fiscal problems ongoing that seemed
5 to get worse and worse.

6 Q When you say merging are you talking about combining into
7 a single entity or just being under the common control of --

8 A They were merging their services and basically, for the
9 most part, placing them in the Kingston institution location or
10 campus, whatever. But they were merging to become -- I believe
11 their over (sic) intent was to be one agency eventually, but
12 they still exist as separate entities.

13 Q But in terms of --

14 A So --

15 Q -- were both locations going to remain open?

16 A The -- well, then what happened was the fiscal problems
17 became so bad that they decided that they couldn't keep both
18 places open. They were going to have to choose one location.

19 MR. ESTOCK: Excuse me. Can we get a timeframe from the
20 witness just so --

21 HEARING OFFICER LEHMANN: Yeah. And can get some
22 clarifications? I think the question was for both locations.
23 I think we've --

24 MR. VITALE: Oh, I'm --

25 HEARING OFFICER LEHMANN: --identified three locations.

1 MR. VITALE: I'm sorry. That's a fair --

2 BY MR. VITALE:

3 Q When I asked for both locations was there anything special
4 about Kingston and Benedictine? Or put it another way, when
5 you just answered about both locations what were the two
6 locations you were talking about with both locations?

7 A Essentially the staff of Benedictine was being transferred
8 to -- most of them were transferred to work on -- in the
9 physical location of the Kingston Hospital.

10 Q So the two locations you were talking about were Kingston
11 and Benedictine?

12 A Correct.

13 Q Okay.

14 HEARING OFFICER LEHMANN: And what time period are we
15 referring to?

16 MR. VITALE: And you made reference to the fact that there
17 was a suggestion of closing one of them. So when was it that
18 there was any suggestion about closing one of the facilities?

19 THE WITNESS: Okay. So the merging of the staff was
20 started in like 2009. They started talking about the closing
21 of one of the locations, I believe it was 2011-2012 that they
22 started talking about that one place had to be closed because
23 there was such fiscal problems. The problems were immense.

24 BY MR. VITALE:

25 Q And whenever it was 2011-2012, the discussion about

1 closing, was that immediate or was there a timetable for
2 closing one of them?

3 A They were looking to close them I believe in 2012.

4 HEARING OFFICER LEHMANN: Who is they?

5 THE WITNESS: The board of HealthAlliance.

6 HEARING OFFICER LEHMANN: HealthAlliance?

7 THE WITNESS: Yes.

8 HEARING OFFICER LEHMANN: Alright. And which one was --
9 were they identified as being to be closed?

10 THE WITNESS: That was a big discussion. It was almost
11 like I think people were taking bets. It was like a big secret
12 and then all the sudden which one were they going to close?
13 And then they had an announcement, that was scooped by the
14 paper I think or whatever, that they were going to close
15 Kingston and keep Benedictine. But since then they've -- I
16 think they've -- I don't know what they're doing, but --

17 MR. VITALE: Well --

18 HEARING OFFICER LEHMANN: And when was that?

19 THE WITNESS: But -- well, I do know what they're doing.
20 They now -- they -- then there was another -- well, I'm sorry,
21 what was your question?

22 HEARING OFFICER LEHMANN: When was the announcement that
23 they were going to close Kingston?

24 THE WITNESS: I want to say 2012, but it could have been
25 2013. I think it's 2012.

1 HEARING OFFICER LEHMANN: Mr. Vitale?

2 MR. VITALE: Okay.

3 BY MR. VITALE:

4 Q Other than the discussion about fiscal problems and the
5 possible closing of one location, were there any other problems
6 that were addressed or solutions to their fiscal problems that
7 were discussed?

8 MR. ESTOCK: If I -- before you answer, can I get a
9 clarification on problems? We're talking about problems in the
10 HealthAlliance --

11 MR. VITALE: Yeah. I'm sorry. It's a fair point. When
12 you earlier testified about fiscal problems, whose fiscal
13 problems were we talking about?

14 THE WITNESS: HealthAlliance, which includes -- well,
15 HealthAlliance includes HealthAlliance, and also Benedictine
16 and Kingston. I get -- Benedictine is still a separate entity.
17 So they'll talk about that they're -- that, you know, their
18 budget is different from the Kingston budget. But essentially
19 the managing entity, HealthAlliance, is having fiscal problems
20 and that's what this is about.

21 BY MR. VITALE:

22 Q Okay.

23 A Probably more details --

24 Q And --

25 A -- than you need to know.

1 Q -- just so we're clear, and so the closing of one of the
2 facilities was to -- the possible closing of one of the
3 facilities was to address HealthAlliance's fiscal problems?

4 A Yes.

5 Q Okay. And were there any other discussions by
6 HealthAlliance about possible solutions to their fiscal
7 problems?

8 A Right. So one of the other things they needed to do or
9 look to -- toward doing, to try to help them, was to affiliate.
10 They want -- they -- the CEO announced, I believe it was 2013,
11 that their future depended upon being able to affiliate with
12 some fiscally sound institution in the future.

13 Q Okay. In -- you mentioned that NYSNA serves as the
14 collective bargaining representative of the Benedictine nurses,
15 correct?

16 A Yes.

17 Q Is there a -- in 2013 was there a collective bargaining
18 agreement in effect for that Benedictine unit?

19 A Yes.

20 Q And when was that contract set to expire?

21 A At the end of 2013.

22 Q Okay. And was there -- is -- was there any connection --
23 when you say in 2013 the CEO is making these comments about
24 affiliation, does that in any way impact negotiations at
25 Benedictine for a successor agreement to succeed the contract

1 that's expiring in December of 2013?

2 A Yes.

3 Q What is the effect?

4 A So the -- okay. So we're working cooperatively, you know,
5 and we're in negotiations, but we're -- we were trying to work
6 cooperatively with Benedictine and HealthAlliance, because we
7 want the place to stay open if possible. And it was
8 communicated to us that one of the ways we could -- because
9 there wasn't going to be really any money available in the
10 contract, because of the fiscal problems, one of the ways that
11 HealthAlliance could be more attractive to a potential suitor
12 if you will, to have some merger with them, would be if there
13 was labor peace.

14 I don't think they wanted -- you know, no one wanted to
15 have informational picketing or whatever taking place.
16 Contentious bargaining would make HealthAlliance less of an
17 attractive entity. So we were going along the lines of look,
18 let's just do a one year contract to get us through 2014.
19 Hopefully by then, by the end of 2014, the merging partnership
20 would have taken place and then we could -- we'd be dealing
21 with the new entity that hopefully would be fiscally sound.

22 MR. ESTOCK: Mr. Hearing Officer, it seems like I remember
23 all this as if it yesterday, but what's the relevance to this?

24 HEARING OFFICER LEHMANN: Yeah, what's --

25 MR. VITALE: Oh, I'm sorry. And I'm being perfectly -- do

1 you want me to do it outside the presence of the witness --

2 MR. ESTOCK: Might not --

3 MR. VITALE: -- or I'll do it --

4 MR. ESTOCK: -- be a bad idea.

5 HEARING OFFICER LEHMANN: Okay. That's fine. You want to
6 step outside?

7 THE WITNESS: Yeah, okay.

8 HEARING OFFICER LEHMANN: Just in the small room.

9 MR. VITALE: And I appreciate it's a perhaps bigger than
10 usual wind up, but here's why it's relevant. HealthAssociates
11 (sic) --

12 MR. ESTOCK: HealthAlliance.

13 MR. VITALE: I'm sorry, health --

14 MR. ESTOCK: Yep.

15 MR. ESTOCK: Thank you. HealthAlliance. Let me back up.
16 Nistel was created for a very particular purpose. Nistel was
17 created to solve the Catholic Church's problem with abortions
18 services. And it served as a solution.

19 I'm going to, among other things, elicit testimony that
20 the Catholic Church has severed its relationship with
21 Benedictine. So the raison d'être of Nistel is no longer --
22 it's no longer needed. They're -- since the Catholic Church is
23 no longer at Benedictine, we don't need this Nistel providing
24 services. Benedictine can do so directly.

25 In the same context I'm also trying to show that not only

1 is Nistel no longer needed, but that Nistel is a thorn in
2 HealthAlliance's plans going forward to find this affiliate
3 with -- it can survive going forward. And there is going to be
4 testimony that Employer representatives said just like, as he
5 was explaining, labor unrest at Benedictine would cause some
6 problems, Nistel is going -- existence is going to cause some
7 problems to a potential suitor. And so that is --

8 HEARING OFFICER LEHMANN: But how does --

9 MR. VITALE: I'm sorry. So -- but my point is there is an
10 articulated -- there was an articulated reason why Nistel was
11 going to go out of business in July. It was consistent with
12 the fiscal problems. It was -- going out of business was a
13 solution to those fiscal problems.

14 When Nistel reverses course and says that it's going to
15 now remain for the foreseeable future, it does not do so
16 because -- or articulate our fiscal problems have been solved,
17 we're no longer a thorn in the side of any potential suitors.
18 It is done expressly and solely for the purpose of having the
19 representation -- the decert election go forward. I'm trying
20 to show that there's not a genuine question concerning
21 representation. That this company's intention is to go out of
22 business as soon as the election is held, because the very
23 problems that it had in late 2013 and early 2014 that led to
24 its decision to close remain in effect.

25 And it lends credence and it's corroborative of the

1 suggestion that Nistel isn't a thorn to put on record the
2 evidence about how even with Benedictine -- what's going on at
3 Benedictine is being shaped by this, what I loosely call the
4 urge to merge. There's an agenda, there's -- it's being
5 pursued at Benedictine in the way of having a single -- a one
6 year contract. And it's being pursued at Nistel -- was being
7 pursued at Nistel to have Nistel go out of existence.

8 And it's my intent to establish a record that will show
9 that the very problems that gave cause to Nistel's existence
10 have been removed and that Nistel's continued existence is a
11 problem for the company. They have every incentive and
12 intention of getting rid of Nistel and the only reason they did
13 not do so in July 20 -- July 30th of this year is because of
14 the petition that was filed on July 17th.

15 HEARING OFFICER LEHMANN: But how does that address the
16 issue of whether or not Nistel -- that there's an imminent --
17 or a date for closure? I mean how does all that -- I
18 understand it's background, but how does that address the
19 issue, which in this case is that the Union has stated it's
20 going to present evidence that there's an imminent date for
21 closure, which is clearly relevant, but how is all that
22 background? I mean Nistel is currently open, right? So how
23 does it address the issue of whether or not Nistel is going to
24 close imminently or there's a date certain on closure?

25 MR. VITALE: Because they have this financial pressure

1 upon them to close and they have articulated that delaying the
2 closing and reversing the WARN act is costing them even more
3 money. And they have done so solely for the purpose of having
4 the election go forward. They have not articulated they intend
5 to stay in operation beyond the decert election, because they
6 have these financial concerns, they have this urge to merge and
7 Nistel is a problem. And in the context of everything that's
8 gone on, I think that satisfies the showing that they are not -
9 - that the demise of Nistel is imminent and certain.

10 There's this financial constraint that they're existing
11 under. There are these across the table discussions about the
12 constraints they're existing under, the solution for those
13 constraints. There is no reasonable conclusion to draw other
14 than, based upon all the evidence I'm trying to demonstrate, is
15 that they will be closing as soon as the decert election is
16 held.

17 They said the only reason we stayed open, even though it's
18 costing us money, even though we're hemorrhaging money now,
19 we're going to continue to hemorrhage money and extend our
20 existence just long enough so we can have an election. So they
21 say foreseeable future. I don't think that satisfies the
22 Board's requirement for a genuine question concerning
23 representation.

24 It's not -- again, we're getting back to this is not just
25 a robust employer and the robust employer says, you know, well,

1 I'm going to remain in existence for the foreseeable future.
2 We have -- in that case you would have no evidence to suggest
3 that's not true. There is lots of evidence that I'm trying to
4 develop that when the Employer says foreseeable future and they
5 refuse to put a deadline on it and the argument is well,
6 because we don't know if, you know, ISIS is going to strike
7 tomorrow. Who knows?

8 There are business models, there are business plans.
9 There are lots of contracts that they enter in terms of when
10 they're going to do things. There's WARN notices that need to
11 be given when you're going to be closing or not.

12 To sit here in September of 2014 and say well, we think
13 we're just going to be open forever unless someone tells us
14 otherwise, that's just not credible in light of everything that
15 we know; the fiscal problems, the fact that they're looking for
16 a suitor, that Nistel is an impediment to finding that suitor,
17 that they've said the only reason they reversed the WARN
18 notices is to have the election go forward. Unless you're
19 going to tell me it's going to take 12 months to have a decent
20 election on this, we haven't satisfied the fact that layoffs
21 are not imminent and certain.

22 MR. ESTOCK: May I respond?

23 HEARING OFFICER LEHMANN: Yes, please.

24 MR. ESTOCK: Assuming that I wanted to get into an
25 argument over HealthAlliance's financial conditions or the

1 business plans, which I don't and I won't, I would point out
2 that this witness is not legally competent to testify to those
3 matters. He may testify to what he heard and then you can deal
4 with the hearsay issue, but he's not competent to advise as to
5 what HealthAlliance's financial plans are, what their merger
6 plans are, etc. But we don't have to go into that aspect of
7 it.

8 The financial pressure to close Nistel to my knowledge
9 does not exist. We have a very good relationship with
10 HealthAlliance. Where this financial pressure argument comes
11 from is uncertain, but I don't think it's relevant either; what
12 HealthAlliance might think about it.

13 But I do need to address several issues that were stated
14 that -- regarding issues that are not in evidence. The
15 repeated argument that the only reason was to let the election
16 go forward, I made some of those public statements and others
17 were published by combined statements by Nistel and
18 HealthAlliance. And our statement was that we believed that
19 the cancellation of the election was causing furor and
20 difficult feelings in our surgical suites. And for that reason
21 we were going to reverse our decision and let the election go
22 forward.

23 That's not quite the same as saying the only reason was to
24 get the election done, because that implies something else that
25 wasn't there; that we would say okay, that's it, the election

1 is done, we're going to shut. That is not our plan, that has
2 never been a stated plan. In fact their stated plans were the
3 opposite.

4 With regard to a merger, the torn issue that came up is
5 also one that I don't know where that came from. We have never
6 been advised by HealthAlliance that we were a problem in their
7 search for a merger partner. We don't know of any such issue.

8 But I really don't want to encourage, through my comments,
9 to go down that irrelevant path. The public statements and
10 they're statements that were joint statements by
11 representatives of Nistel and HealthAlliance is that we plan to
12 remain open for the foreseeable future. That's not a
13 disingenuous statement. That's a very simple statement.

14 We are not looking to close down after the election.
15 Whatever happens in the election happens in the election. We
16 had a reason. And I will tell you what Nistel's rationale was
17 for that reason. And that was counsel is correct, the Catholic
18 issue was the sole issue that Nistel and Foxhall came into
19 existence.

20 On the other hand, the relationship has been very good
21 between the parties, Nistel and HealthAlliance. There is no
22 bad feelings between those parties. In fact it's just the
23 opposite.

24 But again, I don't want to travel down those paths. We're
25 here, we're an operating entity, we've expressed publicly that

1 we intend to stay open for the foreseeable future. You can't
2 even ask General Motors if they would forecast further than
3 saying foreseeable future.

4 If you look at a corporate example of where suddenly the
5 reason for their existence no longer exists look at Honda. In
6 1952 he produced terrible piston rings. He was almost out of
7 business. People would have said -- he went on to produce the
8 Honda automobile.

9 It just doesn't relate. We're here, we're ready to move
10 forward. I think this is irrelevant testimony.

11 MR. VITALE: Well, let me very -- of course some of my
12 comments were not relying upon evidence in the record, because
13 I wasn't summing up evidence in the record. I was -- the
14 purpose of my comments were to demonstrate what record I intend
15 to build and why it's relevant, because as I was developing
16 that record the question was raised how is this relevant? So I
17 am explaining that it relevant subject to connection to these
18 other facts that will also be testified to. And look --

19 HEARING OFFICER LEHMANN: We don't need -- I mean I'm just
20 -- I want to hear witness testimony on the issue and the issue
21 is whether or not there is imminent closure or a date certain
22 of Nistel's closure. Okay? I don't think it's relevant why
23 Benedictine signed a one year contract with NYSNA. I don't --
24 you know, and that there's some future that may or may not
25 happen in the future. And I don't even know if it's happened

1 in 2014.

2 I mean I just want to hear testimony. And I think we can
3 limit the question. I don't think it needs to be a big
4 buildup, but I don't understand why there can't be maybe five
5 or 10 questions getting to 2014 and Nistel and NYSNA.

6 MR. VITALE: Well, the reason is because you cannot
7 analyze what happened on any one day in 2014 without knowing
8 the background. You have to -- and he says -- and I don't know
9 -- he's saying it. There is no testimony in the record and I
10 don't know if he's going to be providing the testimony on the
11 record. It's --

12 HEARING OFFICER LEHMANN: Well, the parties can stipulate.

13 MR. VITALE: It's -- no. Well, the -- I am not going to
14 stipulate that the company has every intention of remaining in
15 effect in 2015. I'm not going to stipulate that -- you know,
16 that Nistel is not a torn in the side of a potential suitor,
17 because I am telling everyone right now that is what Mr. Darby
18 is going to say Mr. Estock told him. Right?

19 HEARING OFFICER LEHMANN: Then --

20 MR. VITALE: When Mr. Estock says Nistel is going to be
21 closing down that's shocking. Why? Because it's a thorn in
22 the side of a suitor. It's an impediment to the suitor.

23 And for you to take that evidence, that it's a thorn in
24 the side of a suitor, to say but I don't know that there's
25 actually real problems about -- I don't know want to know why

1 Nistel came into existence to begin with and it's irrelevant
2 that that problem disappeared, I don't see how you can say it's
3 irrelevant that the reason for its existence is not longer a
4 reason.

5 I don't see how you can say it's irrelevant that
6 HealthAlliance, which is running both Benedictine and Kingston
7 and is using Nistel to provide surgical services to all these
8 entities, that it's on a quest to urge to merge, and it has
9 financial constraints and that there were conversations across
10 -- to get in context the statement -- the simple statement that
11 Mr. Darby is going to proffer that this is what Howard told me.
12 To understand that comment that Nistel is a thorn in the side
13 of a potential investor, I had to develop the record to -- what
14 is he talking about? What is he talking about? That
15 HealthAlliance has made all these public proclamations about
16 problems, has made all these public proclamations about a
17 desire to seek an affiliate -- a larger affiliate with which to
18 combine. You need to have that background.

19 MR. ESTOCK: For the record, since we're on the record, I
20 don't believe I ever used the term regarding Nistel being a
21 thorn in the side of looking for a suitor, but we'll hear what
22 Mr. Darby has to say in this setting. But for the record, I
23 have no recollection of ever saying such a thing. But again, I
24 don't necessarily want to travel down a road that's going to
25 take us out of the arena that we should be in.

1 If there were statements made regarding why Nistel was
2 considering shutting down, and Nistel changed its mind, and
3 that changing of mind was not illegal and it has made credible
4 statements in public that it is going to go on for the
5 foreseeable future, the 2015 question is novel to me today, but
6 it doesn't matter. I think we are alive and operating and our
7 intention is to continue to do so. And that's the relevant --

8 MR. VITALE: Well, and --

9 MR. ESTOCK: -- area we're looking at.

10 HEARING OFFICER LEHMANN: Let's have Mr. Darby back in
11 here and let's resume his testimony. If there's objections
12 state the objections, if it's objection relevance or witness
13 competency, if he's not competent to testimony about financial
14 conditions --

15 MR. VITALE: And to be clear --

16 HEARING OFFICER LEHMANN: -- or only what he heard and
17 where he heard it from.

18 MR. VITALE: And to be clear, NYSNA was not offering Mr.
19 Darby as an expert witness as to the finances of
20 HealthAssociates (sic). His testimony was based purely upon
21 statements by HealthAssociate (sic) or Nistel representatives
22 about fiscal issues.

23 HEARING OFFICER LEHMANN: Okay. So we need -- his
24 testifying about statements, I think it's important to have him
25 identify who, what representative from whatever entity is

1 making the statements. Okay? Mister --

2 MR. VITALE: Before we do that, just going back, could we
3 just have the court reporter, before we had this colloquy,
4 remind me where I was in my questioning? So if we could have
5 the last question to Mister -- or you have great notes? You're
6 going to tell me?

7 HEARING OFFICER LEHMANN: I don't know if he can do that.

8 MR. VITALE: Oh, I'm sorry, I'm sorry. You're right. On
9 the tape recording --

10 HEARING OFFICER LEHMANN: I believe there was --

11 MR. VITALE: You're right, you're right. I'm sorry.

12 HEARING OFFICER LEHMANN: -- testimony about a Benedictine
13 contract expiring at the end of 2013.

14 MR. VITALE: Okay.

15 HEARING OFFICER LEHMANN: But --

16 MR. VITALE: Okay, thank you.

17 HEARING OFFICER LEHMANN: Thank you. Can we go off the
18 record for one second?

19 (Whereupon, a brief recess was taken)

20 HEARING OFFICER LEHMANN: On the record.

21 Mr. Vitale, you may continue.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. VITALE:

24 Q In an effort to get us into 2014 let's start with the
25 beginning of 2014.

1 A Okay.

2 Q The Benedictine CBA has expired, correct?

3 A Uh-huh.

4 Q And is the Sisters of Benedictine still in control of
5 Benedictine?

6 A No. That -- they severed their relationship to
7 Benedictine to help HealthAlliance do what they're -- the
8 things they're trying to do become fiscally sound.

9 Q Okay. And just to clarify, when you talk about
10 HealthAlliance's fiscal soundness, is that testimony based upon
11 your review of financial records?

12 A No. Not -- I mean not -- no, not -- I didn't look at
13 their books.

14 Q Is it based upon things people told you?

15 A Yes.

16 Q Okay. Is it --

17 A And then in the papers, and the public statements by the
18 CEO that I read in the papers, and statements that we would get
19 from the employer in negotiations and -- yes.

20 Q Okay. So by --

21 HEARING OFFICER LEHMANN: And I'm sorry. And when you
22 said employer are you meaning Nistel in this case or are you --

23 THE WITNESS: No.

24 HEARING OFFICER LEHMANN: -- talking Benedictine?

25 THE WITNESS: Benedictine.

1 HEARING OFFICER LEHMANN: Or health --

2 THE WITNESS: I'm talking about Benedictine
3 HealthAlliance.

4 HEARING OFFICER LEHMANN: Health -- alright.

5 THE WITNESS: Yeah.

6 HEARING OFFICER LEHMANN: Continue.

7 THE WITNESS: I've had -- you know, we had other -- for
8 instance there was an arbitration about health insurance where
9 the employer brought on a lot of evidence about their fiscal
10 problems about why they couldn't go into our benefit fund.

11 HEARING OFFICER LEHMANN: Okay. But the employer --

12 THE WITNESS: Just --

13 HEARING OFFICER LEHMANN: -- that you're referring to is
14 Benedictine?

15 THE WITNESS: Benedictine, yeah, HealthAlliance.

16 HEARING OFFICER LEHMANN: Okay.

17 MR. VITALE: So we're in 2014 now.

18 THE WITNESS: 2014.

19 BY MR. VITALE:

20 Q Now, we're jumping -- the Hearing Officer is going to be
21 very happy. We're now into March of 2014.

22 A Right.

23 Q Have you concluded your negotiations for a successor
24 agreement to the Benedictine contract --

25 A No.

1 Q -- that expired?

2 A In March we were -- I think we were having about our third
3 session and --

4 Q And during the course of those negotiations, whether --
5 those negotiations in March, whether at the table or away from
6 the table, did you have any conversations with anyone
7 concerning Nistel?

8 A Yeah. So after the session on -- that third session in
9 March, Howard pulled Katie and -- Katie Dannible is a coworker
10 -- aside and said that their plan -- there were now plans to
11 close Nistel in the new future and they were going to be
12 working on their WARN notice. And it was suggested, you know,
13 that, you know, there would be a way to -- we'll just spilt the
14 nurses back to where they came from. Again, this is sort of
15 off the record. This is a discussion not during the course
16 negotiations, but afterwards.

17 And my response was, you know, pretty sure our position is
18 going to be that they -- that's a bargaining unit. We have --
19 you know, they should come to us as a unit. We don't want --
20 we're not going to disband the unit.

21 Q Okay. But without getting into the substance --

22 A Okay.

23 Q -- so when you were informed by Mr. Estock that Nistel was
24 closing you had some preliminary discussion about the effects
25 of that closing, correct?

1 A Yes.

2 Q Alright. Did you have any discussion as to the reason for
3 the closing?

4 A Yeah, the reasons were again, consistent with why we were
5 doing the one year --

6 Q Just to be very clear, did Mr. Estock say anything about
7 the reasons?

8 MR. ESTOCK: I wonder if we could not have leading
9 questions on this portion? If it's heading --

10 MR. VITALE: Well, I'm sorry.

11 MR. ESTOCK: -- where I think it is --

12 MR. VITALE: I was trying -- well, let me do it a
13 different way. As best as --

14 HEARING OFFICER LEHMANN: Thank you.

15 MR. VITALE: -- you can whatever discussions were held in
16 which Nistel's -- the reasons for Nistel's closing, to the
17 extent you could say I said, X said, I said, X said, as opposed
18 to just saying well, there was a discussion.

19 THE WITNESS: I see.

20 BY MR. VITALE:

21 Q So whoever that might be --

22 A Right.

23 Q So was there any discussion of the reasons for Nistel's
24 closing?

25 A So my -- the discussions were with Howard Estock. You

1 know, and statements that he made taking about the fact that
2 consistent with trying to be an attractive entity for someone
3 to come and merge with, right, that HealthAlliance -- the
4 existence of Nistel was not an attractive feature. It's like,
5 you know, they don't even have their own nurses on staff. They
6 have to have this staffing agency.

7 So closing Nistel was going to be a positive thing for
8 HealthAlliance, because it was going to make them a more
9 attractive partner. Also there's a cost associated with
10 Nistel. You have Policastro, the owner, is getting paid money
11 and for what purpose? You know, not really contributing
12 anything to the thing.

13 So there was -- those were the two main reasons it would
14 be a fiscally sound thing to do to close Nistel. And it would
15 make Nistel -- make HealthAlliance a more attractive partner.

16 Q But were those two reasons, were those -- who said, if
17 anyone, those were two reasons?

18 A Howard, yeah. We -- I mean I can't say exactly what
19 session or in what context. I mean we -- you know, we would
20 have phone conversations also, but I don't think that anybody
21 is going -- you know, I think that that's --

22 HEARING OFFICER LEHMANN: And Howard you're referring to
23 Mr. Estock?

24 THE WITNESS: Howard Estock, yeah.

25 HEARING OFFICER LEHMANN: Okay. And when were these

1 statements made?

2 THE WITNESS: These were, you know, March, April, May. I
3 mean within -- during, you know, two -- in the course of those
4 negotiations from March until, you know, June, when we
5 finished.

6 HEARING OFFICER LEHMANN: March of --

7 THE WITNESS: March of 2014 to June, right.

8 HEARING OFFICER LEHMANN: And these are negotiations
9 between who and who?

10 THE WITNESS: NYSNA and Benedictine, you know, or
11 HealthAlliance.

12 HEARING OFFICER LEHMANN: Okay.

13 THE WITNESS: You know?

14 MR. VITALE: Alright.

15 HEARING OFFICER LEHMANN: This is --

16 MR. VITALE: This would be U-2.

17 HEARING OFFICER LEHMANN: This is U-2.

18 MR. VITALE: I'm sorry. And I didn't give her a copy of
19 the contract.

20 BY MR. VITALE:

21 Q So Mr. Darby, you --

22 A Yes.

23 Q -- were testifying that there was a period in March in
24 which Mr. Estock informed you Nistel would be closing. Could
25 you identify what has been marked as U-2?

1 A This is the WARN notice, I assume.

2 (Union U-2 identified)

3 Q Okay. And --

4 HEARING OFFICER LEHMANN: Can you explain what --

5 MR. VITALE: Sure. And was there any discussion in March
6 as to the timetable for when Nistel would be closing?

7 THE WITNESS: July 25th, the end of July.

8 BY MR. VITALE:

9 Q Okay. So in U-2 in the numbered paragraph five, is that
10 consistent with what you thought would be contained in the WARN
11 notice?

12 A Yes.

13 MR. VITALE: Okay. Union offers U-2.

14 HEARING OFFICER LEHMANN: And WARN notices are what? Can
15 you explain that?

16 MR. VITALE: Oh.

17 THE WITNESS: Yeah, so it's a requirement. When there's
18 going to be the closing of an institution that I think is more
19 than 100 or something or more than 50, I can't remember what it
20 is, where that -- the -- it's a government requirement that
21 this notice be given to the employees and to the affected
22 parties.

23 HEARING OFFICER LEHMANN: Okay. And WARN stands for
24 Worker Adjustment and Retraining Notification??

25 THE WITNESS: Yes.

1 HEARING OFFICER LEHMANN: Alright.

2 THE WITNESS: This was a --

3 HEARING OFFICER LEHMANN: Mr. Estock?

4 THE WITNESS: It's a big deal to get it right, you know?

5 HEARING OFFICER LEHMANN: Alright. Mr. Estock, any
6 objection?

7 MR. ESTOCK: No.

8 HEARING OFFICER LEHMANN: Okay. Any objection?

9 MS. LYDECKER: No.

10 HEARING OFFICER LEHMANN: Alright. I'll receive Union 2.

11 (Union's U-2 received in evidence)

12 MR. VITALE: Thank you.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. VITALE:

15 Q So as a result of the WARN notice did NYSNA and Nistel
16 meet to have any discussions about the effects?

17 A Yes. So we -- once it was clear that Nistel was going to
18 close, we expanded our bargaining -- our Benedictine
19 negotiations bargaining to include the inclusion of the Nistel
20 members into that contract. And then there was --

21 Q And were there any issues -- did the inclusion of --
22 approximately how many nurses at Nistel?

23 A 44.

24 Q Did the inclusion of 44 nurses in the Benedictine unit
25 create any issues?

1 A A few issues. We have an agreement with the employer to
2 try to --

3 Q I'm sorry, with which employer?

4 A With HealthAlliance, Benedictine.

5 MR. ESTOCK: I'm going to object again to relevance. And
6 if it serves to speed things up this is all -- I'm willing to
7 stipulate to all of this, if it was relevant and maybe it'd
8 save some time --

9 MR. VITALE: Okay.

10 MR. ESTOCK: -- to do that.

11 MR. VITALE: Actually, but maybe we -- I appreciate Mr.
12 Estock's efforts to try to expedite things.

13 HEARING OFFICER LEHMANN: Are you --

14 MR. VITALE: I'm going to --

15 HEARING OFFICER LEHMANN: -- foregoing on that question?

16 MR. VITALE: I'm sorry, yes. Well, I'm about to -- you
17 want to go off the record for a second?

18 HEARING OFFICER LEHMANN: Sure. Off the record.

19 (Whereupon, a brief recess was taken)

20 HEARING OFFICER LEHMANN: On the record.

21 MR. VITALE: Okay.

22 HEARING OFFICER LEHMANN: Mr. Vitale, you want to --

23 MR. VITALE: Yes. In off the record discussions I offered
24 -- we had marked as Union 3 an additional document that if
25 admitted into evidence would expedite the hearing and so I

1 offer Union 3.

2 MR. ESTOCK: Okay. And Union 3 is an accurate document.
3 It's relevant. It is accurate and true, but I still object to
4 its relevance.

5 HEARING OFFICER LEHMANN: Okay. Mr. Vitale, can you
6 explain what U-3 is, please, for the record?

7 MR. VITALE: Sure. Very quickly, it is a -- Mr. Darby was
8 about to testify about a preexisting agreement between
9 Benedictine and NYSNA that talked about numbers and trying to
10 equalize the numbers between Kingston and Benedictine. The
11 incorporation of -- and it's supposed to be on a 50/50 one for
12 one basis. The sudden incorporation of approximately 44 nurses
13 from Nistel into the Benedictine unit would arguably run afoul
14 of that existing agreement that it's supposed to be one to one.

15 And so the parties were papering their understanding that
16 this would be permitted. And then of course the next couple of
17 hires at king -- the next couple of hires would have to be at
18 Kingston, so as to try to reach equalization as opposed to
19 Benedictine gets 44 and then you continue with the one for one,
20 four and four. So this is an email between Mr. Estock and Mr.
21 Darby about the amendment to the prior equalization agreement
22 and the clarification of the prior equalization agreement.

23 (Union's U-3 identified)

24 HEARING OFFICER LEHMANN: And --

25 MR. VITALE: And that was -- and this is an email that was

1 -- I'm sorry, this actually looks like it's incomplete or it's
2 got too much on -- I'm sorry, it is supposed to be a four page
3 document. I don't know if I handed out something more than a
4 four page document.

5 MR. ESTOCK: No, I have four pages.

6 MR. VITALE: Okay.

7 HEARING OFFICER LEHMANN: I have four pages also.

8 MR. VITALE: The four document is an email dated May 27th.
9 It's attaching an agreement and the email trail has some prior
10 emails leading up to the email of the 27th.

11 HEARING OFFICER LEHMANN: Can you explain the fourth page,
12 please?

13 MR. VITALE: The fourth page is, as I indicated that the -
14 - going forward with the plans to close Nistel and to move --
15 incorporate the Nistel nurses into the Benedictine unit and
16 covered by the Benedictine contract raised some issues about
17 equalization. And so this -- the fourth page is the proposed
18 amendment of the prior settlement agreement to allow that to
19 happen.

20 HEARING OFFICER LEHMANN: Okay. Mr. Estock?

21 MR. ESTOCK: The --

22 HEARING OFFICER LEHMANN: This is a --

23 MR. ESTOCK: As I said --

24 HEARING OFFICER LEHMANN: -- an accurate --

25 MR. ESTOCK: -- the document is accurate, counsel's

1 explanation, a little truncated, but to go into the full
2 details we would be talking for days. So it is -- his
3 explanation is accurate. It's irrelevant to this proceeding.
4 So I object to its entry, but it's an accurate document.

5 HEARING OFFICER LEHMANN: Okay. And what -- can you
6 explain the relevance to U-3, please, Mr. Vitale?

7 MR. VITALE: It -- I'm trying to demonstrate and quickly
8 confirm that not only was it the intent to close Nistel in
9 March, not only was it the intent to close Nistel in April, not
10 only -- it was also still -- and I'm going to get quickly to
11 still the intention to close Nistel as of May 27th and even as
12 late as the morning of June 23rd.

13 MR. ESTOCK: I'd stipulate to all of that.

14 HEARING OFFICER LEHMANN: Okay. I'll receive U-3.

15 (Union U-3 received in evidence)

16 MR. VITALE: Okay.

17 MR. ESTOCK: Over my objection? Sometimes success doesn't
18 come easy.

19 MR. VITALE: And I know it's in the record already and if
20 I'm given some latitude, I wanted to just show the witness the
21 copy of the June 17th decert petition.

22 HEARING OFFICER LEHMANN: It's -- yeah, it's --

23 MR. VITALE: Right --

24 HEARING OFFICER LEHMANN: -- in the record.

25 MR. ESTOCK: It's in the record.

1 MR. VITALE: But I'm just going to give him a -- the one
2 page, as opposed to -- I just want to show him something and I
3 don't need to dig out that --

4 HEARING OFFICER LEHMANN: Okay.

5 MR. VITALE: -- it's in the formal record --

6 HEARING OFFICER LEHMANN: That's fine.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. VITALE:

9 Q Mr. Darby, showing you a copy of the decert petition that
10 was filed on June 17th. Did you have any conversations or
11 contact with Mr. Estock subsequent to June 17th as to the
12 company's intention to go forward with their WARN notice?

13 A Yes.

14 MR. VITALE: Alright. Can we go off the record just for a
15 second?

16 HEARING OFFICER LEHMANN: Sure. Off the record.

17 (Whereupon, a brief recess was taken)

18 HEARING OFFICER LEHMANN: On the record.

19 Okay. Mr. Vitale, you just handed out --

20 MR. VITALE: Yeah, I'm sorry --

21 HEARING OFFICER LEHMANN: -- Union's exhibit 4?

22 MR. VITALE: Yes. Yes, I've handed out Union exhibit 4 in
23 an effort I -- in an effort to move things along. It is an
24 email from Mr. Estock to Mr. Darby dated June 23rd at 9:48 a.m.
25 indicating that, as far as I know right now, the timetable

1 remains the same as in the WARN notices between June 25th and
2 August 8th. And that is a response to an inquiry on July 9th -
3 - I'm sorry, on June 19th, which is set forth below on the
4 bottom half of page one of U-4, in which Mr. Darby is seeking
5 confirmation for the closing date for Nistel.

6 (Union U-4 identified)

7 HEARING OFFICER LEHMANN: Okay. Mr. Estock?

8 MR. ESTOCK: Yes, it's an accurate document. I object to
9 it simply to -- it's not relevant to these proceedings.

10 HEARING OFFICER LEHMANN: Okay. I'm going to allow
11 Union's exhibit 4. I'll receive that into evidence. Do you
12 need the decert --

13 (Union's U-4 received in evidence)

14 MR. VITALE: No.

15 HEARING OFFICER LEHMANN: -- petition?

16 MR. VITALE: Oh, I'm sorry. Off the record? This is
17 another exhibit that I think if we get in we could probably do
18 it the way we just have.

19 HEARING OFFICER LEHMANN: We're still on the record,
20 right? Yeah.

21 MR. VITALE: Oh, we never went --

22 HEARING OFFICER LEHMANN: This is U-5? Is that --

23 MR. VITALE: Yeah. I'm sorry --

24 HEARING OFFICER LEHMANN: -- what you've handed out? U-5?

25 MR. VITALE: Thank you, Mr. Hearing Officer. Yes, I've

1 handed out what the Union has marked as U-5. It is an email
2 from Mr. Estock on June 23rd at 1:06 p.m. in which Mr. Estock
3 is announcing to the Board, in response to the Board's email at
4 10:19, I guess two hours earlier, that the hearing on the
5 decert petition was postponed indefinitely.

6 At 1:06 p.m. Mr. Estock is announcing and confirming that
7 Nistel is rescinding its decision to close its operations and
8 will continue to operate as it has for the foreseeable future.
9 Nistel's employees will continue to be employed by Nistel for
10 the foreseeable future.

11 (Union's U-5 identified)

12 HEARING OFFICER LEHMANN: Mr. Estock?

13 MR. ESTOCK: No objection.

14 HEARING OFFICER LEHMANN: No objection? Alright. I just
15 -- I'm going to receive Union's exhibit 5 into evidence. Is
16 this the complete string of email? I know it's starting in the
17 middle of the page. Is there --

18 (Union's U-5 received in evidence)

19 MR. VITALE: Oh, yes. And I will explain. The reason why
20 you do not see -- the blank, the top half of page one of U-5 is
21 -- I was not a representative of NYSNA, excuse me, as of June
22 23rd. So I was not CC'ed on the email. And I asked one of the
23 people who had received this email to forward me a copy. So I
24 was blanking out the fact that this morning I got a copy of
25 that email.

1 HEARING OFFICER LEHMANN: Okay. But otherwise --

2 MR. ESTOCK: Just so the record is complete, the CC on
3 this email lists Clair Tuck, who I believe is in house counsel
4 for NYSNA, correct?

5 MR. VITALE: Correct, yeah.

6 MR. ESTOCK: Okay. So she was noticed on this particular
7 email.

8 HEARING OFFICER LEHMANN: Okay. And who's
9 winstonlisa13@yahoo.com?

10 MS. LYDECKER: That would be me.

11 MR. ESTOCK: Ah.

12 HEARING OFFICER LEHMANN: Okay. Ms. Lydecker, that's you?

13 MS. LYDECKER: Yes.

14 HEARING OFFICER LEHMANN: That's your email address? And
15 Cherie Hanson --

16 MR. ESTOCK: Rodriquez --

17 HEARING OFFICER LEHMANN: -- Rodriquez?

18 MR. ESTOCK: -- is the administrator of Nistel. Jane
19 Lucente is a nurse manager for Nistel.

20 HEARING OFFICER LEHMANN: Okay.

21 MR. ESTOCK: And Kelly Moore is in your office.

22 HEARING OFFICER LEHMANN: Alright. Okay. Received. This
23 is U-6?

24 MR. ESTOCK: I have no objection to U-6.

25 HEARING OFFICER LEHMANN: Is this U-7?

1 MR. VITALE: Yes --

2 HEARING OFFICER LEHMANN: U-7. Mr. Vitale, can you please
3 identify Union's exhibits 6 and 7 for the record?

4 MR. VITALE: Sure. 6 and 7 are both rescissions of WARN
5 notices dated June 24th. U-6 is addressed to July Sheridan-
6 Gonzalez, the president of NYSNA. And U-7 is addressed to --
7 well, was addressed to a rank and file employee who we have
8 redacted the addressee. But it appears that the text is
9 identical.

10 It's announcing the rescission of the April 17th letter
11 providing WARN Act notice and echoing what was said in the
12 email to the Board the day before, that it's -- that Nistel,
13 Inc. has determined that it will continue operations and that
14 therefore the announced planned closing will not occur. And it
15 has decided to continue its operations for the indefinite
16 future.

17 (Union's U-6 & 7 identified)

18 HEARING OFFICER LEHMANN: Okay. And that's both U-6 and
19 U-7. Can we stay with U-6 for just a second?

20 MR. VITALE: Yeah.

21 HEARING OFFICER LEHMANN: I only have two pages.

22 MR. VITALE: Ah, you're right. I think it's a three page
23 --

24 HEARING OFFICER LEHMANN: It's missing the employee -- the
25 complete employee listing.

1 MR. ESTOCK: Just as a suggestion, I don't think the list
2 of employees is -- for either side's purposes is relevant.

3 There was a listing --

4 MR. VITALE: I think I agree. We can just --

5 HEARING OFFICER LEHMANN: You want to remove --

6 MR. VITALE: -- have the knowledge -- have record
7 acknowledge that U-6 is the first two pages of what was a three
8 page document and that --

9 MR. ESTOCK: Right.

10 MR. VITALE: -- the third page is not relevant for --

11 MR. ESTOCK: We did provide the entire list. Let me -- if
12 I may, let me just clarify my having no objections on U-5, 6
13 and 7. I am doing -- I am not objecting in order that the
14 record be clear, based on the admission of the Union exhibits
15 2, 3 and 4, which I did object to. So for the purpose of
16 having a full statement. If at any later date U-3 and -- U-2,
17 3 and 4 are determined they should have not been admitted into
18 evidence, then I believe that should cover 5, 6 and 7 as well.
19 Sorry to make it complicated, but that's my position.

20 HEARING OFFICER LEHMANN: Okay. But other than that you
21 have no objection --

22 MR. ESTOCK: No objection. Correct.

23 HEARING OFFICER LEHMANN: -- to the admission of --

24 MR. ESTOCK: 5, 7 and 7, correct.

25 HEARING OFFICER LEHMANN: -- 5, 6 and 7. Okay. Receive -

1 - I'll receive Union's exhibit 6 and 7. Received.

2 (Union's U-6 & 7 received in evidence)

3 MR. VITALE: Thank you. And if -- Mr. Hearing Officer, if
4 you could show the witness Union exhibit 6?

5 HEARING OFFICER LEHMANN: Now, are we keeping the second
6 page or are we removing the second page?

7 MR. VITALE: Well, we might as well keep the second page.

8 HEARING OFFICER LEHMANN: Alright.

9 MR. VITALE: I think we've already clarified it's a three
10 --

11 HEARING OFFICER LEHMANN: It's just not --

12 MR. VITALE: -- page document.

13 HEARING OFFICER LEHMANN: -- a complete -- alright.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. VITALE:

16 Q Mr. Darby, what if anything occurred as a result of
17 Nistel's rescission of its WARN notice on June 24th?

18 A Well, on -- we -- we had a session. The next session was
19 June 25th I think --

20 Q Okay. So --

21 A Yeah, that was the June 25th.

22 Q And at -- what if anything was discussed about the
23 rescission of the WARN notice at your June 25th session?

24 A Right.

25 Q And in your answer, please identify if some -- if a

1 statement is made, identify who the speaker of that statement
2 was.

3 HEARING OFFICER LEHMANN: Alright. Before you answer, Mr.
4 Estock?

5 MR. ESTOCK: Yes. And just for foundation, we are talking
6 about a meeting. I think it would be helpful for the record to
7 identify the parties at the meeting, what the purpose of the
8 meeting was.

9 HEARING OFFICER LEHMANN: Right.

10 MR. VITALE: Okay.

11 THE WITNESS: Right. So it was Benedictine negotiations
12 and so the committees -- the respective committees were there.
13 Am I supposed to try to identify who was on the committees or
14 do you need that? No? Okay. So the -- and Howard was the
15 chief spokesman for the -- representing Benedictine the
16 employer and actually Nistel. He was doing both, right?

17 But these negotiations were -- so we had tentatively, you
18 know, planned in the course of our negotiations we had the
19 whole deal basically set to bring Nistel into the Benedictine
20 bargaining unit. And then with the notice a few days before
21 that that was no longer going to be happening, my first question
22 essentially was so what happened? Like, you know, we were all
23 set to get this done and then all the sudden it's completely
24 blown up.

25 And Howard's response basically was that the -- Nistel

1 HealthAlliance felt that it was important that the nurses have
2 a chance to vote in their decertification. That disenchanted
3 nurses are -- could be problematic. And so they wanted to
4 support -- or not support. They wanted to -- they wanted the
5 election to go forward. Yeah, the election, the vote to go
6 forward, the decertification vote to go forward.

7 And I asked about even though this is going to be -- this
8 is not the most cost efficient thing to do -- I don't -- can't
9 recall my exact words, but made a point about the finances of
10 this. You know, the Employer was always talking about the fact
11 they have no money, but here's something that would have saved
12 money that they're -- but they're not going to do it. And he
13 said yeah, this has been -- this is the decision to -- that the
14 vote needs to go forward. That at that -- that it's -- the
15 most important thing from the Employer's point of view was for
16 the decert vote to go forward. More important than cost or
17 whatever.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. VITALE:

20 Q Did Mr. Estock or anyone at that meeting identify any
21 other reasons for why the WARN notice had been rescinded?

22 A No.

23 HEARING OFFICER LEHMANN: Was there any statement about
24 how long Nistel would remain open?

25 THE WITNESS: Not -- nothing definitive. I mean we asked,

1 but he didn't -- there was no, you know, two months or
2 something. There was no --

3 HEARING OFFICER LEHMANN: What was his response --

4 THE WITNESS: There was no --

5 HEARING OFFICER LEHMANN: -- when you asked?

6 THE WITNESS: You know, not this year or something like
7 that. I -- there was no definitive -- I can't remember the
8 exact wording of it, of what it was.

9 MR. VITALE: Alright. If I could have a moment, please?

10 HEARING OFFICER LEHMANN: Yes. Off the record.

11 (Whereupon, a brief recess was taken)

12 HEARING OFFICER LEHMANN: On the record.

13 Mr. Vitale, any further questions?

14 MR. VITALE: Oh, I'm sorry. On the record I have no
15 further questions of Mr. Darby. Thank you.

16 HEARING OFFICER LEHMANN: Okay. Mr. Estock?

17 CROSS EXAMINATION

18 BY MR. ESTOCK:

19 Q After three and half years of negotiations I'm going to
20 call you Tom if you don't mind.

21 A That's fine.

22 Q The -- you were just discussing negotiations on the 25th.
23 And I think at some point in your testimony you said you can't
24 remember exact words, am I correct? Yeah?

25 A Yeah.

1 HEARING OFFICER LEHMANN: Not to interrupt, this is June
2 25th?

3 MR. ESTOCK: June. What did I say?

4 HEARING OFFICER LEHMANN: You said the 25th.

5 MR. ESTOCK: Oh, June 25th.

6 HEARING OFFICER LEHMANN: June 25th 2014.

7 MR. ESTOCK: Yeah. Correct. Same -- the same negotiation
8 session that Tom just referred to.

9 BY MR. ESTOCK:

10 Q Now, you indicated that you had asked me, but no
11 definitive answer was given on how long it would be. Let me
12 ask you, do the words foreseeable future strike a familiar cord
13 with you? Did I say it was for the foreseeable future we
14 planned to stay open?

15 A Something -- yeah, but then I asked for more clarification
16 and something about the year. As I recall, the -- you were --
17 for this year. Right? That -- well, anyway that's how I
18 recall that --

19 Q Yeah, well, memories fade --

20 A -- because I think I asked for some more clarification
21 about it and --

22 Q Okay.

23 A -- it was, you know, that they would stay open for this
24 year at a minimum or something.

25 Q Okay.

1 A You didn't say those words, but anyway --

2 Q Okay.

3 A -- that's my --

4 Q Your impression of the --

5 A Yeah. Right, right.

6 Q Okay.

7 HEARING OFFICER LEHMANN: Well, did he say they'd close in
8 2015?

9 THE WITNESS: No, he didn't --

10 HEARING OFFICER LEHMANN: Did he say those words?

11 THE WITNESS: No, he did not say, no.

12 MR. ESTOCK: Okay. You also testified on a meeting we had
13 out in the hall after -- during -- I think it was during a
14 negotiation session. Where I advised you of the coming Nistel
15 closing at that time --

16 THE WITNESS: Yes.

17 BY MR. ESTOCK:

18 Q Yeah. It was you and Kate, I believe.

19 A Yes.

20 Q And myself. On the -- and you mentioned that I said it
21 may be a positive and make it more attractive for a merger.

22 Did I --

23 A Yeah.

24 Q -- use the word May in there do you recall? May make them
25 more attractive to a merger?

1 A No, I -- I don't recall the way -- my -- and I don't even
2 know, you know, if it was on that exact date. I mean we had
3 subsequent discussions.

4 Q Yeah, we had a number --

5 A And I don't even know if it was that -- on that afternoon
6 that we -- that that statement was made. I think there was
7 some -- I think more we were talking about the little dispute
8 as to whether or not, you know --

9 Q Oh, the --

10 A -- go separate or go --

11 Q That --

12 A That more --

13 Q Yeah.

14 A -- is what --

15 Q The so called equalization.

16 A I think at subsequent -- I think at subsequent --

17 HEARING OFFICER LEHMANN: Alright. Hold on. You guys,
18 the court -- one at a time.

19 THE WITNESS: I --

20 HEARING OFFICER LEHMANN: Alright?

21 MR. ESTOCK: Sorry.

22 HEARING OFFICER LEHMANN: Mr. Darby?

23 THE WITNESS: Okay. So I think subsequent discussions to
24 that date, my impression was that it was definitely a factor to
25 make HealthAlliance a more attractive partner was let's get rid

1 of this Nistel thing.

2 BY MR. ESTOCK:

3 Q Okay. Now, I'll test your memory. Did I --

4 A Yeah.

5 Q -- ever use the word thorn in the side, in describing
6 that?

7 A Probably not. Yeah.

8 HEARING OFFICER LEHMANN: In describing what?

9 MR. ESTOCK: In describing the status of Nistel to the
10 looking to merge.

11 HEARING OFFICER LEHMANN: Okay.

12 THE WITNESS: Did I say that?

13 HEARING OFFICER LEHMANN: The same answer? That same
14 answer?

15 THE WITNESS: Oh, oh. Yeah, no. Yeah, probably not --

16 MR. ESTOCK: Okay.

17 THE WITNESS: -- my answer --

18 BY MR. ESTOCK:

19 Q Now, and also again I don't think either of us were making
20 notes of our conversation that day, but in those discussions
21 when we talked about the forthcoming WARN notices, and we
22 talked about the cost, did -- when I made that statement to
23 you, do you remember whether I used to follow up comment it's
24 not a lot of cost, but it's some? This would be the cost of
25 Nistel on top of the cost of the nurses.

1 A Are we talking about on the 24th?

2 Q 24th or --

3 A Or --

4 Q Yes, on March -- this is the meeting in --

5 A The 25th.

6 Q -- the hallway in March or --

7 A Oh.

8 Q -- any other similar off the record. And if you don't

9 recall, you don't.

10 A Yeah, I guess I don't recall exactly that --

11 Q Okay.

12 A -- no.

13 Q In that first meeting in the hallways with Katie present,

14 when you asked me when it was going to happen did I not say I'm

15 not sure, but I'll let you know? That we have at least a 90

16 day period that we have to meet?

17 A Yes.

18 Q Okay.

19 HEARING OFFICER LEHMANN: This was the conversation --

20 THE WITNESS: In March.

21 MR. ESTOCK: In March.

22 HEARING OFFICER LEHMANN: -- in March of 2014?

23 THE WITNESS: Yeah.

24 MR. ESTOCK: Correct.

25 HEARING OFFICER LEHMANN: And the Katie that you're

1 referring to is? What's Katie's last name?

2 THE WITNESS: Dannible.

3 HEARING OFFICER LEHMANN: Dannible.

4 MR. ESTOCK: Dannible, thank you, yeah. No further
5 questions.

6 HEARING OFFICER LEHMANN: Is -- I -- Ms. Lydecker, do you
7 have any questions?

8 MS. LYDECKER: No.

9 HEARING OFFICER LEHMANN: No? Is Kingston still open or
10 is it closed?

11 THE WITNESS: Open.

12 HEARING OFFICER LEHMANN: It's Benedictine open or closed?

13 THE WITNESS: Open.

14 HEARING OFFICER LEHMANN: Okay.

15 MR. VITALE: No further questions. No further questions?
16 No further questions.

17 HEARING OFFICER LEHMANN: Okay.

18 THE WITNESS: Do I take this with me?

19 HEARING OFFICER LEHMANN: Thank you very much. No, you
20 can leave those or we'll take those.

21 THE WITNESS: Okay.

22 HEARING OFFICER LEHMANN: Thank you, Mr. Darby.

23 THE WITNESS: Alright.

24 HEARING OFFICER LEHMANN: Alright. Off the record.

25 (Whereupon, at 12:53 p.m. a luncheon recess was taken)

A F T E R N O O N S E S S I O N

(1:37 P.M.)

HEARING OFFICER LEHMANN: On the record.

Want to raise your right hand?

Whereupon,

KATIE DANNIBLE

Having been first duly sworn, was called as a witness and testified herein as follows:

HEARING OFFICER LEHMANN: Alright. Have a seat. Want to state your name for the record?

THE WITNESS: Yeah.

HEARING OFFICER LEHMANN: Spell your last name.

THE WITNESS: Katie Dannible. It's D-A-N-N-I-B-L-E.

HEARING OFFICER LEHMANN: Mr. Vitale?

MR. VITALE: Thank you.

D I R E C T E X A M I N A T I O N

BY MR. VITALE:

Q Ms. Dannible, what is your position if any with NYSNA?

A I'm a program representative.

Q And how long have you served as a program representative?

A For approximately 15 months.

Q And in connection with your duties as a program representative, do you have any responsibilities concerning Nistel?

A Yes, I represent them, the members, and we enforce the

1 collective bargaining agreement.

2 Q And in connection with the representation of members and
3 enforcement of the contract does your duties include negotiation
4 of new contracts?

5 A I am not the chief spokesperson, but I am included on
6 negotiations, yes.

7 MR. VITALE: Could you show the witness exhibit 6?

8 HEARING OFFICER LEHMANN: Sure.

9 BY MR. VITALE:

10 Q Was the topic of the rescission of the WARN notice, as
11 reflected in exhibit 6, was that WARN notice rescission
12 discussed at any negotiation sessions you attended?

13 A Yes, on June 25th.

14 Q Okay. And could you just explain on the 25th what were
15 the purposes of those negotiations?

16 A We were negotiating a contract for Benedictine.

17 Q Okay. And during the course of those discussions was
18 there any reference to the rescission of the WARN notice?

19 A Yes.

20 Q As best you can, what do you recall what discussed and to
21 the extent you can recall who said what --

22 A Tom Darby had asked Howard for an explanation as to why
23 they rescinded the WARN notice and Howard responded that there
24 would be hell to pay and that it would affect patient care.
25 Tom then said that --

1 Q I'm sorry. There'd --

2 A Yeah.

3 Q -- be hell to pay and affect patient care if what?

4 A If the vote didn't go through.

5 HEARING OFFICER LEHMANN: And who said that?

6 THE WITNESS: Howard did.

7 HEARING OFFICER LEHMANN: Mr. Estock?

8 THE WITNESS: Mr. Estock, yes.

9 HEARING OFFICER LEHMANN: Alright.

10 BY MR. VITALE:

11 Q Okay. I'm sorry. And what if anything was anyone's
12 response to Mr. Estock's statement?

13 A Tom then said so you want there to be a decert and you
14 want to let that go through? And Howard, Mr. Estock responded
15 saying that the nurses would be angry and pissed off if they
16 didn't give them the opportunity to have a vote.

17 Q Okay. Was there any discussion of -- was there any other
18 reason articulated for the rescission of the WARN notice?

19 A No.

20 Q Was there any discussion as to how long Nistel would
21 remain in operation?

22 A Howard, Mr. Estock said that for the foreseeable future
23 and he didn't think that it would be by the end of the year.

24 Q Did he offer any commitments that it would not be until
25 after the end of the year?

1 A It was unknown. Foreseeable future.

2 Q Was there any discussion as to any financial impact of the
3 rescission?

4 A Mr. Estock acknowledged that it was going to cost them
5 money, but he thought it was -- they thought it was worth it
6 for employee relations.

7 Q Did Mr. Estock give any indication as to the amount of
8 money or the magnitude of the money?

9 A No.

10 MR. VITALE: I have no further questions. Thank you.

11 HEARING OFFICER LEHMANN: Okay. Mr. Estock?

12 MR. ESTOCK: Katie, how are you doing?

13 THE WITNESS: Good. How are you?

14 MR. ESTOCK: Good, thanks. I have no questions for you.

15 HEARING OFFICER LEHMANN: I have some questions. Going
16 back to the June 25th bargaining session, the -- can you
17 explain or can you -- what specifically was the discussion
18 between either -- well, who was talking? Were you -- was this
19 between -- how many -- who was involved in this conversation
20 that you --

21 THE WITNESS: That I just --

22 HEARING OFFICER LEHMANN: -- just testified about?

23 THE WITNESS: -- testified to? It was the -- I was not
24 speaking. I was Tom Darby. We were with the negotiating
25 committee. And we were with management. We were there for the

1 negotiation session for Benedictine.

2 HEARING OFFICER LEHMANN: Okay. And Mr. Darby -- did Mr.
3 Darby speak first about the WARN notice?

4 THE WITNESS: Yes, I believe so, yes.

5 HEARING OFFICER LEHMANN: Okay. And what did Mr. Darby
6 say?

7 THE WITNESS: He had asked Mr. Estock for an explanation
8 as to why it was being rescinded.

9 HEARING OFFICER LEHMANN: Okay. And what did Mr. Estock
10 say?

11 THE WITNESS: That's when he responded that there would be
12 hell to pay if we didn't allow there to be a vote and that that
13 would affect patient care.

14 HEARING OFFICER LEHMANN: Okay. And did Mr. Darby say
15 anything in response?

16 THE WITNESS: No, what he said in response was the fact
17 that -- so you want there to be a decert? It doesn't make --
18 you know, it doesn't make any sense. And that's when Mr.
19 Estock responded saying that the nurses would be pissed off and
20 angry if they didn't allow them the opportunity to have the
21 vote.

22 HEARING OFFICER LEHMANN: Okay. Anything else that was
23 said by Mr. Estock?

24 THE WITNESS: No, just, you know, in that conversation
25 after that was the fact that he acknowledged that, you know,

1 it's not going to save them -- it's going to be costing them
2 money to keep it open, but he thought that it was worth it for
3 the employee relations.

4 HEARING OFFICER LEHMANN: Okay. Did he say how long that
5 Nistel would remain open?

6 THE WITNESS: No.

7 HEARING OFFICER LEHMANN: Okay. You had testified earlier
8 --

9 THE WITNESS: He just said -- well, he didn't have a
10 specific date for length. It was just for the foreseeable
11 future.

12 HEARING OFFICER LEHMANN: Okay. Is that what Mr. Estock
13 said?

14 THE WITNESS: Yes.

15 HEARING OFFICER LEHMANN: For the foreseeable future --

16 THE WITNESS: Correct.

17 HEARING OFFICER LEHMANN: -- Nistel would remain open?

18 THE WITNESS: Yeah.

19 HEARING OFFICER LEHMANN: Anything else? Anything
20 further?

21 THE WITNESS: I think the only other thing that I recall
22 him saying was that it wasn't -- it wouldn't be before the end
23 of the year he didn't think. But he -- like I said, he didn't
24 have an exact date. It was unknown to him.

25 HEARING OFFICER LEHMANN: So what wouldn't be before the

1 end of the year?

2 THE WITNESS: The closure of Nistel.

3 HEARING OFFICER LEHMANN: Okay. So it wouldn't -- the
4 closure wouldn't take place before December 31st of 2014?

5 THE WITNESS: He didn't think so, but he didn't have a
6 date. It was still -- it was back to the foreseeable future
7 they were staying open.

8 HEARING OFFICER LEHMANN: Okay.

9 MR. ESTOCK: I have some questions.

10 HEARING OFFICER LEHMANN: Well --

11 CROSS EXAMINATION

12 BY MR. ESTOCK:

13 Q The answer not before the end of the year was in response
14 to Tom asking me what does foreseeable future mean?

15 A I believe so, yes.

16 Q Alright. Did you take that to mean that as -- well,
17 scratch that. I'm asking you to speculate.

18 MR. ESTOCK: No further questions.

19 HEARING OFFICER LEHMANN: Mr. Vitale?

20 MR. VITALE: No questions.

21 HEARING OFFICER LEHMANN: Ms. Lydecker, no questions?

22 MS. LYDECKER: No questions.

23 HEARING OFFICER LEHMANN: Okay. Alright. Thank you very
24 much.

25 THE WITNESS: Here you go --

1 HEARING OFFICER LEHMANN: Thank you.

2 THE WITNESS: You're welcome.

3 HEARING OFFICER LEHMANN: Mr. Vitale?

4 MR. VITALE: Peggy Bachman.

5 HEARING OFFICER LEHMANN: Ms. Bachman, want to raise your
6 right hand?

7 Whereupon,

8 MARGARET BACHMAN

9 Having been first duly sworn, was called as a witness and
10 testified herein as follows:

11 HEARING OFFICER LEHMANN: Okay. Have a seat. Want to
12 state your name for the record and spell your last name,
13 please?

14 THE WITNESS: It's actually Margaret, technically,
15 Bachman, B-A-C-H-M-A-N.

16 HEARING OFFICER LEHMANN: Mr. Vitale?

17 MR. VITALE: Thank you.

18 DIRECT EXAMINATION

19 BY MR. VITALE:

20 Q What is your position with NYSNA?

21 A I am an area director for Westchester and the lower Hudson
22 Valley.

23 Q Does your responsibilities as area director include
24 responsibilities for Nistel?

25 A Yes.

1 MR. ESTOCK: Excuse me.

2 BY MR. VITALE:

3 Q In your capacity as area director, have you attended any
4 negotiations with Nistel this year?

5 A Yes.

6 Q What was the first such negotiation?

7 A It was, I believe, July 24th.

8 Q Okay. And who, if anyone, was the principle spokesman for
9 Nistel?

10 A Andrew Saulitis. I may be pronouncing that wrong.

11 Q Okay. And at that session did NYSNA have any proposals
12 that included economic terms?

13 A We did.

14 Q And did NYSNA present those proposals to Nistel?

15 A We did.

16 Q And what if any response did you get regarding the
17 economic provisions of NYSNA's proposals?

18 A The Employer's attorney indicated that the Union's
19 economic proposals were non-starters. And he further indicated
20 that they would not be discussing any matters of compensation
21 or economic issues in this contract.

22 MR. ESTOCK: I'm going to object at this point to -- the
23 negotiations -- first of all, the -- what was just discussed by
24 the witness was part and parcel of the first unfair labor
25 practice -- excuse me, second unfair labor practice. I'm not

1 sure which it was. One of the unfair labor practice charges
2 that has already been filed.

3 I'm not sure what the relevance is to this proceeding,
4 with regard to positions taken by the Employer in negotiations.
5 Many things are said in negotiations obviously. But anyway I
6 object to the -- and question the relevance of this line of
7 testimony.

8 HEARING OFFICER LEHMANN: Mr. Vitale, do you have any --

9 MR. VITALE: And I do have an explanation and I make the
10 same offer as before. I can say it in the presence of the
11 witness or outside the presence of the witness. It's Mr.
12 Estock's choice.

13 MR. ESTOCK: Why don't we do it the same was as before
14 just for the reasons?

15 HEARING OFFICER LEHMANN: Okay. That's fine. Ms.
16 Bachman, you want to --

17 THE WITNESS: Yeah.

18 HEARING OFFICER LEHMANN: -- go to that room?

19 MR. VITALE: It's the penalty box.

20 MR. ESTOCK: The penalty box, that's right.

21 HEARING OFFICER LEHMANN: Mr. Vitale?

22 MR. VITALE: Try not to start too vaguely, but it's
23 NYSNA's position that in the circumstances of this case there
24 is no question concerning representation, for all the reasons
25 about the WARN notices and it's rescission. The conduct of

1 Nistel subsequent to the rescission and subsequent to the June
2 25th sessions that have been testified to, we believe is
3 probative of whether post this decision to remain open for the
4 foreseeable future they are acting as if they are going to
5 remain open for the foreseeable future.

6 And Ms. Bachman is going to be providing testimony that
7 they're not acting as if they are going to be open for the
8 foreseeable future. She is going to offer testimony about we
9 can't -- we're barely making payroll. We're not going to talk
10 about economics. That is not the kind of conduct you would
11 expect from an employer that plans on being operating for the
12 foreseeable future. And --

13 HEARING OFFICER LEHMANN: Is she going to testify that
14 there's some sort of statement, as far as closure or imminent
15 closure?

16 MR. VITALE: She is not going to offer any evidence in
17 terms of -- other than they just -- the company's continued
18 foreseeable future without definition.

19 HEARING OFFICER LEHMANN: Okay. But so they -- it's not
20 like the Employer had stated that during the bargaining
21 sessions; that they were going to close --

22 THE WITNESS: Oh, I'm sorry --

23 HEARING OFFICER LEHMANN: -- imminently or these economic
24 -- because I mean the question -- the line of questioning was,
25 in my opinion, not relevant. I mean you're going into economic

1 proposals and the answer was that they're non-starters and they
2 won't talk about economics. But is there something leading
3 into that would be relevant in this hearing --

4 MR. VITALE: I --

5 HEARING OFFICER LEHMANN: -- which is --

6 MR. VITALE: Yes. And I'm trying to answer. I believe
7 the evidence that she's going to put forward is probative and
8 circumstantial evidence as to whether or not the company is
9 actually intending to continue operations beyond the end of
10 this year. Her testimony would go to that.

11 I think conduct taken that's inconsistent with an approach
12 -- and we can argue about whether it's consistent or
13 inconsistent. But I should at least be able to develop a
14 factual record from which I can argue it's inconsistent. And
15 quite honestly I think we're going to have to confront the
16 issue of the subpoena, because the company is taking the view
17 of despite all the evidence that the Union is going to put on
18 about our equivocations, and the statements that we've given
19 and the inability to give any assurances that we're going to be
20 operating in 2015, I think it's imperative that the company
21 produce documents that go directly to that.

22 And the subpoena seeks to get those kind of documents.
23 Seeks to get communications about the reasons for the
24 rescission of WARN notice. Communications about what intents
25 they have for pursuing -- what documents they have to show that

1 they plan on being in business beyond January 1st 2015.

2 MR. ESTOCK: If I may respond?

3 HEARING OFFICER LEHMANN: Certainly.

4 MR. ESTOCK: This was in labor negotiations. I wasn't the
5 spokesman obviously, but I have done my share of negotiations.
6 In the healthcare field today -- you can take it as, I think, a
7 given that most of the healthcare facilities are in tough
8 economic conditions. I don't know of anyone in the healthcare
9 field or related to it who goes into negotiations saying we're
10 doing so good I hope you ask me for a lot of money.

11 They usually go in the other way. They say boy, it's a
12 tough year. I hope you're not going to ask for a lot of bucks.
13 That's part of negotiations. That's part of the give and take
14 of negotiations.

15 I think if I ever offered money -- well, I did offer money
16 up front once and the people did fall over at the table.
17 Unusual circumstances. But generally you have some hyperbole
18 involved. You have positions that are taken.

19 And to try and transform that dialogue into a factual
20 issue in an R case such as this is proof positive of -- and
21 adds to the reasons for quashing the subpoena here. This is a
22 fishing expedition. And what this witness can testify to
23 assumedly, and I assume it would be accurate as to what was
24 said, is -- can as easily reflect the bargaining position as
25 the true hard facts might be, or they might be otherwise.

1 That's what negotiation is about. That's not what this hearing
2 is about.

3 The relevance here is undercut by the fact that this is so
4 obviously a fishing expedition to try and come up with
5 something that the Union can rely on to try and delay the
6 election in this matter. So my argument is, again, relevance,
7 the fact that we're dealing with an ongoing negotiations and
8 trying to use positions taken in negotiations as bedrock for
9 developing a far-ranging line of questions that have nothing to
10 do with the petition that's before us.

11 HEARING OFFICER LEHMANN: Alright. I'm going to allow
12 this line of questioning. Just -- but I'm going to see where
13 it goes. I mean you've already made a representation she's not
14 going to testify about any imminent closure or dates certain
15 that Nistel is going to --

16 MR. VITALE: She is not going to testify that in either --
17 she's going to talk about two sessions. Her testimony is going
18 to be relatively brief. She's going to go over two sessions.
19 At neither of those sessions is she going to assert the company
20 said we're closing by December 31st. They never have said
21 anything other than foreseeable future.

22 HEARING OFFICER LEHMANN: Okay. Alright. With that I'm
23 going to allow the testimony and we'll see where it goes.

24 MR. ESTOCK: I haven't won any of these rulings yet.

25 MR. VITALE: Well, that might be --

1 HEARING OFFICER LEHMANN: Please. Thank you. Thank you,
2 Ms. Bachman.

3 CONTINUED DIRECT EXAMINATION

4 BY MR. VITALE:

5 Q Ms. Bachman, when Nistel's representatives said that they
6 would not be discussing economics what if anything did you ask?

7 A I asked him if he could please repeat what he said. I was
8 a little confused.

9 Q And did he?

10 A He did.

11 Q Okay. Was there any discussion at the July 24th session
12 about paying bargaining unit members for attending the Nistel
13 bargaining?

14 A Yes, there was discussion about paying them for time lost
15 from work.

16 Q And during the prior negotiations earlier -- the
17 negotiations earlier that year, taking about the potential
18 incorporation of Nistel employees into the Benedictine
19 bargaining unit, were bargaining unit members in attendance to
20 those negotiations?

21 A Yes, the Nistel negotiating members were there.

22 Q And were they compensated for time missed attending those
23 negotiations?

24 A Yes.

25 Q Okay. Was there any discussion as to the time at which

1 negotiations should take place?

2 A There was.

3 Q What was the discussion?

4 A The Employer wanted negotiations to take place --

5 MR. ESTOCK: Objection, relevance.

6 HEARING OFFICER LEHMANN: Yeah, sustained. That's not
7 relevant.

8 MR. VITALE: Well, alright.

9 BY MR. VITALE:

10 Q Was there any -- who is Hanson-Rodriquez?

11 A She is an administrator at Nistel.

12 Q And did she make any comments, during the July 24th
13 session?

14 A She did.

15 Q What did she say?

16 A Regarding our economic proposal, she said that Nistel
17 operates at absolutely no profit and they have just enough
18 money to make payroll.

19 Q Who is Ann Conway?

20 A She is also an administrator at Nistel.

21 Q Was she in attendance at the July 24th meeting?

22 A She was.

23 Q Did you have a subsequent session to July 24th?

24 A Yes.

25 Q And when was that?

1 A September 10th.

2 Q And was Ann Conway at the September 10th meeting?

3 A She was not.

4 Q Do you have any understanding as to why she was not in
5 attendance on September 10th?

6 MR. ESTOCK: I'm going to object at this point again on
7 relevance.

8 HEARING OFFICER LEHMANN: What is the relevance that Ms.
9 Conway wasn't present at the September 10th?

10 MR. VITALE: Because the company that is going to --
11 states to the world that we're in this for the foreseeable
12 future, Ms. Conway is now reduced to a part time status. She
13 was a full time employee, now a part time employee, which is
14 not indicative of a company that's going to continue operations
15 for 2015 --

16 HEARING OFFICER LEHMANN: But there could be a lot of
17 reasons why Ms. Conway was reduced from -- if in fact she was
18 reduced from a full time to --

19 MR. VITALE: I allow --

20 HEARING OFFICER LEHMANN: -- part time.

21 MR. VITALE: -- for the fact that there could be multiple
22 reasons. I should at least be able to develop a record that
23 she is in fact on a part time basis.

24 HEARING OFFICER LEHMANN: I'm going to sustain the
25 objection. I don't think that's relevant.

1 MR. VITALE: Okay.

2 BY MR. VITALE:

3 Q Was Ms. Rodriguez at the September 10th --

4 A Yes --

5 Q -- session?

6 A -- she was.

7 Q And did she have any comments at September 10th?

8 A Again, when we were discussing economics, she repeated
9 what she said that Nistel has absolutely no extra money, no
10 profit and they just make payroll.

11 MR. VITALE: Okay. I have no further questions.

12 CROSS EXAMINATION

13 BY MR. ESTOCK:

14 Q How are you, Peggy?

15 A I'm okay, Howard. How are you?

16 Q About the same. I tried to relieve you from the onerous
17 chore of facing up to my withering cross examination but they
18 didn't buy it. So here I go. You've been in negotiations for
19 a number of years, correct?

20 A Yes.

21 Q Yeah. Call yourself a seasoned negotiator, would you?

22 A I would call myself a seasoned union person, yes.

23 Q Okay, very good. Have you ever had an employer tell you
24 that they couldn't afford the wage increases before?

25 A I have. Well --

1 Q Almost routine, wouldn't --

2 A Excuse me --

3 Q -- you say?

4 A -- I have to correct that.

5 Q Yeah, okay.

6 A I have never had an employer actually say that they could
7 not afford the wage increases.

8 Q Yeah. And that gives you some legal rights at the table -
9 -

10 A When they --

11 Q -- once they say that? Yes.

12 A -- say you can't -- they cannot afford, it does, yes.

13 Q Yes. And most employers avoid saying that. So you got a
14 different statement. But it is not uncommon for employers to
15 say they can't -- don't want to pay it because they aren't
16 making enough profit, can't afford it, words to that effect?
17 Not uncommon.

18 A That is not uncommon.

19 MR. ESTOCK: Alright. Thank you. I have no further
20 questions.

21 REDIRECT EXAMINATION

22 BY MR. VITALE:

23 Q In your seasoned experience have you ever had an employer
24 say I'm not even going to discuss or listen to your economic
25 proposals?

1 A Absolutely not, no.

2 MR. VITALE: No further questions.

3 HEARING OFFICER LEHMANN: Mr. Estock?

4 MR. ESTOCK: No, nothing --

5 HEARING OFFICER LEHMANN: Anything further?

6 MR. ESTOCK: -- further. Thank you.

7 HEARING OFFICER LEHMANN: Ms. Lydecker?

8 MS. LYDECKER: No.

9 HEARING OFFICER LEHMANN: Alright. Thank you.

10 THE WITNESS: I'm so sorry, I --

11 HEARING OFFICER LEHMANN: Thank you, Ms. Bachman.

12 MR. VITALE: I have --

13 HEARING OFFICER LEHMANN: Mr. Vitale?

14 MR. VITALE: -- no other witnesses other than to ask for

15 the documents requested in my subpoena.

16 HEARING OFFICER LEHMANN: Okay.

17 MR. ESTOCK: No --

18 HEARING OFFICER LEHMANN: Do you have any --

19 MR. ESTOCK: I --

20 HEARING OFFICER LEHMANN: Does the Employer have any --

21 MR. ESTOCK: As I said, I hadn't planned on putting on any

22 witnesses pending what the testimony was, and I have not

23 changed my mind.

24 HEARING OFFICER LEHMANN: Okay. So you have no witnesses?

25 MR. ESTOCK: I have no witnesses.

1 HEARING OFFICER LEHMANN: Ms. Lydecker, do you have any
2 witnesses?

3 MS. LYDECKER: No.

4 HEARING OFFICER LEHMANN: Okay. Alright. So that brings
5 us to the subpoena. The -- my understanding is a subpoena
6 duces tecum issued on September -- what date --

7 MR. ESTOCK: Was it Wednesday?

8 HEARING OFFICER LEHMANN: -- Mr. Vitale was the --

9 MR. VITALE: I'm sorry --

10 HEARING OFFICER LEHMANN: -- subpoena issued?

11 MR. VITALE: Well, the Board provided blank copies on the
12 16th. I completed those copies on the 17th. I -- my office
13 emailed that to Mr. Estock on the 17th. And they were served
14 by hand yesterday on the 18th.

15 HEARING OFFICER LEHMANN: The email to counsel was -- what
16 was that, a courtesy copy of that?

17 MR. VITALE: Yes.

18 HEARING OFFICER LEHMANN: Of the -- and then it --

19 MR. VITALE: It was --

20 HEARING OFFICER LEHMANN: -- was actually served --

21 MR. VITALE: It was -- the Association is not taking the
22 view that that counts as effective service.

23 HEARING OFFICER LEHMANN: Okay. And it was actually
24 served on the 18th on Heidi Lenza?

25 MR. VITALE: Yes.

1 HEARING OFFICER LEHMANN: Okay. Because one of -- because
2 then -- Mr. Estock then and Nistel submitted a petition to
3 revoke the subpoena duces tecum to myself today at the
4 beginning of the hearing and one of the arguments, Mr. Estock,
5 is that you -- or is that the Employer argued that the subpoena
6 is facially defective, I think at break, and that it was not
7 properly served. And that it was facially defective going back
8 to that --

9 MR. ESTOCK: Yes.

10 HEARING OFFICER LEHMANN: -- a witness fee had not been
11 tendered. And during a break I believe you were supposed to
12 check --

13 MR. ESTOCK: Yes, and I apologize --

14 HEARING OFFICER LEHMANN: -- to see --

15 MR. ESTOCK: -- I did not, but I can do that with a phone
16 call right now.

17 HEARING OFFICER LEHMANN: Okay.

18 MR. ESTOCK: Can we take a --

19 HEARING OFFICER LEHMANN: Please. That's fine.

20 MR. ESTOCK: Okay. I'll step out.

21 HEARING OFFICER LEHMANN: Off the record.

22 (Whereupon, a recess was taken and a subpoena record was
23 taken.)

24 HEARING OFFICER LEHMANN: On the record.

25 Okay. So this will conclude the record, but before we do

1 will the Union state its final position regarding the issues in
2 this matter, please?

3 MR. VITALE: In lieu of or before I do a post hearing
4 brief?

5 HEARING OFFICER LEHMANN: Well, I take it the parties are
6 not willing to waive the filing of briefs?

7 MR. ESTOCK: I'll certainly --

8 MR. VITALE: Correct.

9 HEARING OFFICER LEHMANN: Okay.

10 MR. VITALE: I'm sorry? He's certainly --

11 HEARING OFFICER LEHMANN: Right.

12 MR. VITALE: -- willing to waive? I am not willing to
13 waive.

14 HEARING OFFICER LEHMANN: Okay.

15 MR. VITALE: So --

16 HEARING OFFICER LEHMANN: Alright. So yeah. No, and just
17 state your final position and obviously you'll allowed -- be
18 allowed to brief.

19 MR. VITALE: Our final position is that there is not a
20 genuine question concerning representation and if we had been
21 permitted to develop -- further develop the record, pursuant to
22 the subpoena, we would have had additional evidence, but
23 nonetheless there is sufficient evidence for the Regional
24 Director to conclude that there is -- it just is not warranted
25 to further process the de-cert petition.

1 HEARING OFFICER LEHMANN: Okay. Mr. Estock, Do you want
2 to --

3 MR. ESTOCK: Yeah. Our --

4 HEARING OFFICER LEHMANN: -- state the Employer's final
5 position?

6 MR. ESTOCK: Yes. Nistel's position is that there is
7 certainly a question concerning representation and that the
8 Regional Director should proceed forthwith to direct an
9 election, period.

10 HEARING OFFICER LEHMANN: Okay. Ms. Lydecker, do you have
11 anything to add?

12 MS. LYDECKER: No.

13 HEARING OFFICER LEHMANN: No? Okay. Any outstanding
14 stipulations agreed to during these proceeding are now
15 received. I think there's been an indication the parties are
16 not willing to waive -- the Employer is, but the Union is not.
17 Briefs are due at the close of business on Friday, September
18 26th 2014, one week.

19 Any motion for extensions should be addressed to the
20 Regional Director. The parties are reminded that they should
21 request an expedited copy of the transcript from the court
22 reporter. Late receipt of the transcript will not be grounds
23 for an extension of time to file briefs, if you fail to do so.
24 If there is nothing further the hearing will be closed. The
25 hearing is now closed.

1 (Whereupon, at 2:57 p.m. the hearing in the above-entitled
2 matter was closed)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

NISTEL, INC.,

Respondent,

And

LISA LYDECKER,

Petitioner,

And

NEW YORK STATE NURSES ASSOCIATION,

Union.

Case No.: 03-RD-130926

Date: September 19, 2014

Place: Albany, NY

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

EXHIBIT C

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NISTEL INC.,

Employer.

LISA LYDECKER, An Individual,

Petitioner,

and

NEW YORK STATE NURSES
ASSOCIATION,

Union.

Case No. 03-RD-130926

The above-entitled matter came on for hearing pursuant to Notice, before DAVID M. TURNER, Hearing Officer, at the Resident Office, Leo W. O'Brien Federal Building, Room 342, 3 Clinton Avenue, Albany, New York, on Monday, December 8, 2014, at 10:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

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1		<u>I N D E X</u>					
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>	
3	Joseph Marsicovete	19	52	--	--	--	

1	<u>E X H I B I T S</u>		
	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
2	BOARD'S		
3	B-3	6	7
4	EMPLOYER'S		
5	E-2	58	58
6	UNION'S		
7	U-9 (a) through (c)	7	9
8	U-10 (a) through (c)	9	9
9	U-11	10	10
10	U-12 (a) and (b)	10	11
11	U-13	13	14
12	U-14	15	16
13	U-15	15	16
14			
15			

P R O C E E D I N G S

(Time Noted: 9:14 a.m.)

HEARING OFFICER TURNER: On the record.

We're on the record. The hearing will be in order. This is a formal hearing In The Matter of Nistel, Inc., Case Number 03-RD-130926 before the National Labor Relations Board. The hearing officer appearing for the National Labor Relations Board is David M. Turner.

All parties have been informed of the procedures at formal hearing before the Board by a service of statement --statement -- pardon me, by the Board by service of a statement of standard procedures with the Notice of Hearing. I have additional copies of the statement for distribution if any party wants more.

Will Counsel please state their appearances for the record? Ms. Lydecker, please just state your name.

MS. LYDECKER: Lisa Lydecker.

HEARING OFFICER TURNER: Okay. And for the Employer?

MR. ESTOCK: Howard Estock.

HEARING OFFICER TURNER: All right. And for the Union?

Joseph Vitale of the law firm Cohen, Weiss and Simon, LLP.

HEARING OFFICER TURNER: Okay. Thank you very much. Are there any appearances?

(No response.)

HEARING OFFICER TURNER: Let the record show no response.

1 Are there any other persons, parties or labor
2 organizations in the hearing room at this time who claim an
3 interest in this proceeding?

4 (No response.)

5 HEARING OFFICER TURNER: It's a little late anyway. All
6 right.

7 I have now proposed, just to sort of set the stage here,
8 the purpose of this hearing -- for the purposes of going on the
9 record today is pursuant to a Board order dated November 20,
10 2014, where the Board remanded this case to the Region for the
11 purpose of dealing with the Union's *subpoena duces tecum*, and
12 I'll quote, "only to the extent that the Union seeks
13 documentation pertaining to whether and to what extent the
14 Employer had or presently has imminent and certain plans to
15 shut down its business or to continue its operations into 2015
16 and beyond." That's our purpose here today.

17 I have shown to the parties the Regional Director's order
18 rescheduling hearing. The order scheduling hearing pursuant to
19 the Board remand within the last few moments, I've marked it as
20 Board's Exhibit 3.

21 (Board's Exhibit 3 identified.)

22 HEARING OFFICER TURNER: Any objection to my receipt of
23 Board's Exhibit 3?

24 MR. ESTOCK: No.

25 HEARING OFFICER TURNER: All right. Without objection

1 Board's 3 is received.

2 (Board's Exhibit 3 received.)

3 HEARING OFFICER TURNER: It is a little after 11:00 this
4 morning and so the record is clear we've spent about an hour
5 this morning where Mr. Estock has produced relatively a
6 substantial number of documents in the last hour and we've had
7 some off-the-record conversations about what those documents
8 are. And at this time I believe Mr. Vitale was going to call a
9 witness?

10 MR. VITALE: No.

11 HEARING OFFICER TURNER: We did not discuss that, or do
12 you want to have some documents marked?

13 MR. VITALE: At this point I just want to have some
14 documents marked.

15 HEARING OFFICER TURNER: All right, okay.

16 MR. VITALE: And during the course of the documents
17 certain comments were made and I'm just going to want to have
18 those comments be part of the record.

19 So, for instance, I would like to have what's already been
20 marked as Union Exhibit 9(a), (b) and (c).

21 (Union's Exhibit 9(a), (b) and (c) marked.)

22 MR. VITALE: 9(a) is the employee leasing agreement
23 between Nistel and Benedictine Hospital that was entered in
24 2009.

25 Union Exhibit 9(b) is a June, 2012 extension of that lease

1 agreement through January 29, 2014.

2 And Union Exhibit 9(c) is a January, 2014 extension
3 through January 29, 2016.

4 With respect to Union Exhibit 9(a), (b) and (c) there are
5 provision within the lease agreement for canceling the lease
6 agreement and counsel for Nistel has represented that there
7 were no notices provided terminating this lease agreement and
8 thus there were also no rescissions of a termination when in
9 June 23rd Nistel rescinded its decision to close.

10 So I'd like to enter into those -- enter into evidence
11 those Exhibits 9(a), (b) and (c) and just have Mr. Estock
12 confirm that I have accurately stated his representation.

13 HEARING OFFICER TURNER: Before we go further, Ms.
14 Lydecker, do you want to have copies of these documents?

15 MS. LYDECKER: I'm fine, thank you.

16 HEARING OFFICER TURNER: Okay.

17 MR. ESTOCK: Yes, I believe that's correct. There was no
18 formal notices under the agreement, per se, to cancel the
19 agreements. I should had, I'm not sure whether I mentioned in
20 my dialog off the record that the parties understood that
21 Nistel was going to close at one -- at some point in and about
22 March of 2014 but there had been no formal notice given under
23 the contract, per se.

24 Any objection to my receipt of Union's 9(a) through 9(c)?

25 MR. ESTOCK: No objection.

1 HEARING OFFICER TURNER: Without objection all three are
2 received.

3 (Union's Exhibit 9(a), (b) and (c) received.)

4 MR. VITALE: Now, the next set that has been marked as
5 Union Exhibit 10(a), 10(b) and 10(c).

6 (Union's Exhibit 10(a), (b) and (c) identified.)

7 MR. VITALE: They are analogous documents of an employee
8 leasing agreement between Nistel and the Kingston Hospital with
9 10(a) being the full agreement, 10(b) being the first
10 amendment, which extended it -- the lease agreement through
11 January 29, 2014.

12 And Union Exhibit 10(c) being the -- numbered the second
13 amendment which was entered in January, 2014 and extended the
14 lease agreement through January 29, 2016.

15 And with the same representations as before, in connection
16 with the Benedictine, in terms of that there were no formal
17 notices issued or retracted in connection with the termination
18 of these agreements.

19 MR. ESTOCK: Correct.

20 HEARING OFFICER TURNER: Okay. Any object --

21 MR. ESTOCK: I have no objection.

22 HEARING OFFICER TURNER: Okay. No objection to my receipt
23 of 10(a) through 10(c) all three are received.)

24 (Union's Exhibit 10(a), (b) and (c) received.)

25 COURT REPORTER: Somebody has a phone on, please turn it

1 off.

2 MS. LYDECKER: Well, I keep my phone on vibrate just
3 because of my kids being in school. Sorry.

4 MR. VITALE: The next document that's been marked and I'd
5 like to have introduced into evidence is Union Exhibit 11,
6 which are redacted minutes of April 25, 2014 of the Health
7 Alliance Board.

8 (Union's Exhibit 11 identified.)

9 MR. VITALE: It is -- although the -- I guess the minutes
10 were at least seven pages long union exhibit 3, because of the
11 redaction, I'm sorry, Union Exhibit 11, because of the
12 redaction, is a three-page document.

13 HEARING OFFICER TURNER: Any objection?

14 MR. ESTOCK: No.

15 HEARING OFFICER TURNER: 11(a) is received.

16 (Union's Exhibit 11 received.)

17 MR. VITALE: The next document is a two parter (sic),
18 Union Exhibit 12(a) is the Health Alliance Board meeting
19 minutes for June 27, 2014.

20 (Union's Exhibit 12(a) identified.)

21 MR. VITALE: It, like Union Exhibit 11 is only three pages
22 long because non-relevant materials have been redacted. And
23 Union Exhibit 12(b) is a handout that is referenced in the
24 board minutes.

25 (Union's Exhibit 12(b) identified)

1 MR. VITALE: And I would ask that Union Exhibit 12(a) and
2 12(b) be introduced into evidence.

3 MR. ESTOCK: No objection.

4 HEARING OFFICER TURNER: Before I rule on the objection,
5 Mr. Vitale, when we were off the record Mr. Estock produced the
6 final version of this attachment -- what I understand to be the
7 final version of this attachment.

8 MR. ESTOCK: Yes.

9 HEARING OFFICER TURNER: And then also the marked up
10 version.

11 MR. VITALE: Just so we're clear. What I have marked as
12 Union Exhibit 12(b) is the final version of the handout.

13 HEARING OFFICER TURNER: Okay.

14 MR. VITALE: Mr. Estock did, airing the side of caution,
15 provide the parties in response to the subpoena a draft of the
16 handout, but I am -- NYSNA is not seeking to introduce that
17 draft --

18 HEARING OFFICER TURNER: Okay.

19 MR. VITALE: -- into the record.

20 HEARING OFFICER TURNER: All right, very well, 12(a) and
21 12(b) are received.

22 (Union's Exhibit 12(a) and 12(b) received.)

23 MR. ESTOCK: Did we receive 11?

24 HEARING OFFICER TURNER: Yes.

25 MR. VITALE: I have one more exhibit to --

1 HEARING OFFICER TURNER: We did not receive 11. I
2 apologize, we did not receive 11. Are you offering 11?

3 MR. VITALE: I'm sorry, I offer 11.

4 HEARING OFFICER TURNER: Yeah, the April 25, 2014 minutes.
5 Without objection, received. Okay.

6 MR. VITALE: I have one additional exhibit that's been
7 marked and before I turn to it I wanted to -- again, Mr. Estock
8 was kind enough in handing out -- and I do want the -- I do
9 think the record should reflect that with respect to the Health
10 Alliance board meetings he did produce documents in addition to
11 the ones that I have marked that Nistel is not seeking to
12 introduce into evidence at this time.

13 But Mr. Estock did make the following representation
14 regarding Nistel's discussion among the Health Alliance Board
15 meeting and he indicated that the decision to no longer use
16 Nistel's services, the decision to close Nistel is not going to
17 be reflected in the board minutes because that was not a
18 decision that was made by the board, that was a decision -- or
19 those decisions were instead made by management.

20 And I just wanted to have that confirmation on the record
21 that the reason there's no robust discussion in the minutes
22 about whether or not to close Nistel or whether or not to
23 rescind the notices is a function of who is the decision maker.

24 MR. ESTOCK: Yes, I made that representation and I should
25 note for the record, because I don't know how -- what we're

1 going to get on the record today, is that I have Mr.
2 Marsicovete here today and even in the nature of an offer of
3 proof or just -- I'll make it an offer of proof, that if called
4 he would testify to exactly what I represented with regard to
5 it being a management's decision and not a board decision.

6 HEARING OFFICER TURNER: Thank you.

7 MR. VITALE: And then the final -- just so, again, the
8 record is clear, we are -- and we are not quite through Mr.
9 Estock's production. We took a break and went on the record to
10 sort of have a milestone. So we're about to go off the record
11 again and have more off-the-record discussions about
12 potentially additional responsive documents to be produced.

13 But at this time I also wanted to -- one of the documents,
14 or the category of documents that Mr. Estock had produced in
15 connection with the Union's *subpoena duces tecum* were various
16 minutes of meetings held by the human resources committee of
17 Health Alliance. And one of those minutes I have marked as
18 Union Exhibit 13, that -- those are the minutes from October
19 23, 2013.

20 (Union's Exhibit 13 identified.)

21 MR. VITALE: It is a three-page document, again, it is
22 obviously redacted for non-responsive, non-relevant materials,
23 and I would move for the introduction of Union Exhibit 13.

24 HEARING OFFICER TURNER: Any objection?

25 MR. ESTOCK: No objection.

1 MS. LYDECKER: No.

2 HEARING OFFICER TURNER: Without objection 13 is received.

3 (Union's Exhibit 13 received.)

4 MR. VITALE: And I'm sorry, and also at this point all of
5 Union Exhibit 9 through 13 have been introduced?

6 HEARING OFFICER TURNER: Yes.

7 MR. VITALE: Thank you. I appreciate the willingness of a
8 representative to testify. At this point I think we should go
9 back off the record, go through some further documents and, you
10 know, not have the witness unnecessarily be a yoyo back and
11 forth between the witness stand and, you know, counsel's table.

12 HEARING OFFICER TURNER: Okay. So why don't we go off the
13 record --

14 MR. ESTOCK: That's fine.

15 HEARING OFFICER TURNER: Why don't we go off the record
16 for that purpose and we will continue to discuss documents.
17 Thank you. Off the record.

18 (Whereupon, at 11:29 a.m., a luncheon recess was taken.)

19

(Time Noted: 1:20 p.m.)

And we discussed some more documents while we were off the rd. And Mr. Vitale you'd like to offer a couple I believe?

HEARING OFFICER TURNER: Your welcome.

(Union's Exhibit 14 identified.)

MR. ESTOCK: Correct.

(Union's Exhibit 15 identified.)

MR. VITALE: The Union Exhibit 15 is actually a six-page document, the pages, I guess, five and six represent a first draft of the fact sheet, pages three and four represent a next draft of the fact sheet, and then pages one and two of Union

1 Exhibit 15 represents the final version of the fact sheet that
2 was posted or circulated.

3 MR. ESTOCK: Correct.

4 MR. VITALE: So I move for the introduction of 14 and 15.

5 MR. ESTOCK: No objection.

6 HEARING OFFICER TURNER: Any objection to 14 and 15?

7 MR. ESTOCK: No.

8 HEARING OFFICER TURNER: Both are received.

9 (Union's Exhibits 14 and 15 received.)

10 HEARING OFFICER TURNER: Mr. Estock, do we know when
11 Exhibit 15 was -- around when Exhibit 15 was circulated among
12 the bargaining unit? It appears it would have been after the
13 filing of the decertification petition, the minimum.

14 MR. ESTOCK: Yes. That was --

15 HEARING OFFICER TURNER: And paragraph 5 also make
16 reference a June 27th.

17 MR. ESTOCK: Correct, so it was -- in fact my memory of
18 vetting this and looking at it was we stopped the final to add
19 that fact in about the June 27th. So my guess is -- educated
20 guess is it went out shortly after June 27th, probably the next
21 day.

22 MR. SAULTIIS: It was early in July.

23 MR. ESTOCK: Okay.

24 HEARING OFFICER TURNER: Possibly early in July?

25 MR. ESTOCK: Yes.

1 HEARING OFFICER TURNER: Okay, all right. Any objection
2 to 14 and 15? Okay, both are received.

3 MR. VITALE: I'm sorry.

4 HEARING OFFICER TURNER: Okay.

5 MR. VITALE: And the Union -- that's all the documents
6 that NYSNA has at this point from the materials produced
7 responsive to our -- the Union's *subpoena duces tecum*. There
8 are two bundles of documents that remain to be addressed, one
9 of which broadly speaking concerns a pension issue that I will
10 either elicit testimony that is sufficient for NYSNA's view or
11 work with Employer counsel to have some kind of factual
12 stipulation since the "documents" about the pension issue had
13 some confidential material, so rather than mark documents and
14 reveal any confidences or go through some 11th hour exercise of
15 trying to redact those documents I'll try to deal with that
16 issue separately.

17 And then finally the second bundle that needs to be
18 addressed which I think we have an outline of a resolution
19 mechanism, the additional bundle is materials that Mr. Estock
20 will go into at the appropriate time but the fall into various
21 classifications of attorney/client privilege documents. And as
22 we discussed in off the records Mr. Estock's going to make
23 certain representations about what those documents would show.
24 The hearing officer will conduct an *in-camera* inspection and if
25 Mr. Estock's representations about what the documents say is

1 accurate then the Union would not press the issue and seek to
2 actually receive those documents.

3 HEARING OFFICER TURNER: Okay.

4 MR. ESTOCK: Correct.

5 HEARING OFFICER TURNER: All right. So in the short term
6 are we calling a witness?

7 MR. VITALE: But the next thing I hope to do is -- well,
8 will do is call Joseph Marsicovete.

9 HEARING OFFICER TURNER: Raise your right hand, sir?
10 Whereupon,

11 JOSEPH MARSICOVETE,
12 having first been duly sworn, was called as a witness and
13 testified as follows:

14 HEARING OFFICER TURNER: Okay. Please have a seat and
15 once you're seated if you could state and spell your name for
16 the record and keep your voice elevated so we can hear you?

17 THE WITNESS: Sure.

18 HEARING OFFICER TURNER: Thank you.

19 THE WITNESS: Joseph, and last name I will spell for you.
20 M-A-R-S-I-C-O-V-E-T-E.

21 HEARING OFFICER TURNER: Thank you.

22 MR. VITALE: Mr. Marsicovete --

23 THE WITNESS: Joe, it will be easier.

24 MR. VITALE: All right, then the purposes -- for the rest
25 of -- my name will be Fred.

1 THE WITNESS: Oh, okay.

2 MR. VITALE: Well, that was that old Monty Python skit,
3 "Why don't we just call everyone Bruce".

4 THE WITNESS: Bruce, right.

5 MR. VITALE: Joe, I appreciate that.

6 DIRECT EXAMINATION

7 BY MR. VITALE:

8 Q What is your current title?

9 A Currently I'm the chief operating officer for the Health
10 Alliance at the Hudson Valley.

11 Q And I think it was buried somewhere in the documents that
12 we looked at today, but that a position you've held since --

13 A I was acting COO since the last week in July of this year.
14 Previous to that I was the chief quality in human resources
15 officer for Health Alliance.

16 Q You've been acting as the CEO since July but when did you
17 stop acting? When did you officially become the --

18 A The formal thing is approximately a month ago. There was
19 a -- matter of fact it's reflected in some of the minutes I
20 think you looked at, they went into private session to -- a
21 confidential session, executive session to approve several
22 changes in the executive staff, mine was one of them.

23 Q Okay. In your capacity as chief quality in human
24 resources officer, which from now on I'll just call HR officer,
25 in your capacity as HR officer did you have any role in what's

1 been represented as a March, 2014 decision to close Nistel?

2 A Yes. Basically the beginning of last -- it goes back to
3 the beginning of the year, with the financial condition at the
4 hospital we're always looking for ways to, you know, cut back
5 on money, you know, how do we save a couple of bucks. Someone
6 had the idea, and I think actually -- I think it was our
7 president Dave Scarpino mentioned, although I'm not sure about
8 that. Someone in the executive cabinet mentioned what about if
9 we close Nistel, we could save the salaries of the Nistel
10 management, because the way that it works is we pay Nistel,
11 they pay the employees, well, Health Alliance pays them. So if
12 we didn't have management people kind of in-between anymore
13 you'd save the management's salaries basically.

14 Q I'm sorry.

15 A Yes.

16 Q And the thought would be the registered nurses would
17 continue to perform their duties but they could be managed by
18 pre-existing managers on the payroll of Benedictine or
19 Kingston?

20 A Not so much in that because the managers are part of --
21 right, Jane and Renee and the managers would continue to
22 manage. No, I'm talking about the people kind of in the back
23 office, Don Policastro, Ann and Sherry primarily three people
24 who are in the senior management of Nistel, if you will.

25 We -- in order to -- we're in the process of trying to --

1 I don't want to get too much information but I think it answers
2 the question. We're trying to consolidate to one campus
3 because of the economics. In order to do that the catholic
4 hospitals had to become non-Catholic, and basically the Sisters
5 kind of back out of the management of it. So once that
6 happened the reason for Nistel, you know, and all of those
7 things no longer really existed. So when we get to the point
8 of trying to consolidate money somebody says "Hey, you know, we
9 don't have to have this separation any longer. As a result of
10 that could we save some money", and that's really where the
11 idea of closing Nistel came in.

12 Q All right.

13 A So we began to do down that, you know, go down that path.

14 Q So that was sort of a late 2013 discussion?

15 A Yeah, there was some discussions about it and it was
16 early, I believe, 2014, I don't remember the exact date or
17 anything, but then we were going to do that.

18 Q Okay. Is -- there was some previous testimony at the
19 first day of hearing in this case, is it also fair to say that
20 in late 2013 besides the desire to save some money, that you've
21 just explained --

22 A Correct.

23 Q -- there was also a bigger plan of Health Alliance trying
24 to find a partner, and that the continuation of Nistel and --
25 would somehow negatively impact the ability to find a partner?

1 A I'm not aware of that testimony or that being a decision,
2 or a part of the decision at all, it really was totally just
3 about saving a couple of bucks.

4 Q Okay. And on a magnitude how many bucks are we talking
5 about, "a couple of bucks"? Because I assume it's not five to
6 ten dollars.

7 A No, no. It would be the -- whatever the salaries of the
8 three executives of Nistel would be. Again, I don't have an
9 exact number in my head but it's probably somewhere in
10 neighborhood -- I would say somewhere 100,000, 125,000, I mean
11 it's something in that ballpark.

12 Q For all three?

13 A For all three I believe.

14 Q Okay.

15 A Again, I might have to think about that but I think it's
16 something in that ballpark.

17 Q Okay. So you indicated that someone had mentioned the --

18 A Right.

19 Q -- possible savings that could be realized, and so are you
20 the person who decided to act upon that suggestion in March of
21 this year?

22 A Basically, the HR because now we have to start to -- you
23 know, we take a look at it. And so we did go down that road,
24 so we communicated with the Nistel folks to say, "Hey, this
25 this is the direction we want to go", and we began the process

1 of saying, "Okay, if we do this what has to happen?" So there
2 were discussions with legal counsel, with Howard and the people
3 in his firm about, you know, what exactly, you know, has to
4 happen.

5 So we discovered, for example, the Warn Notices issue came
6 up, the whole issue about, well, they did start their own
7 pension program so you've got to deal with that. You know, we
8 just kind of went down this checklist of things that we created
9 to say how do we go about, you know -- how do we go about
10 closing it.

11 Q Okay. So let me just try to unpack that a little bit.
12 And I don't know if it's necessary for the -- for you to see
13 the exhibit --

14 A Right.

15 Q -- you were here as Employer counsel unpacked his
16 briefcase, as it were, and explained documents that were coming
17 out, and you were here when we went on the record earlier and
18 had various documents marked. And among those documents were
19 the leasing agreements between Nistel on one hand and
20 Benedictine, and Nistel on one hand and the Kingston Hospital
21 on the other?

22 A Right.

23 Q Right. And you heard me, at some point when I was
24 introducing the documents indicate there were no documents in
25 terms of terminating those agreements.

1 A Uh-huh.

2 HEARING OFFICER TURNER: Yes? Is that answer yes?

3 THE WITNESS: Correct. Well, I heard you say those
4 things, yes.

5 MR. VITALE: Okay.

6 BY MR. VITALE:

7 Q So when you just testified about you told Nistel about
8 this process you wanted to pursue, first of all is that -- who
9 were you telling at Nistel?

10 A Me personally no one, but someone on the Health Alliance
11 side is telling -- starting with Don Policastro, to say, "Hey,
12 Don, we think this is the direction we want to go and here are
13 the things we need to do to" --

14 Q Okay.

15 A -- "accomplish that."

16 Q So to your understanding was that the informal
17 notification of termination of the leasing agreement?

18 A Correct, right.

19 Q Okay. And who was it within HR if it was not you that
20 started that conversation with Mr. Policastro?

21 A If it -- I definitely know it was not me, obviously, my
22 guess is it might have been the existing VP of HR at the time,
23 Greg Howard perhaps, it might have actually been the -- someone
24 from our financial department, it could have been Steve Haas,
25 it could have been a number of people within Health Alliance I

1 just don't know who.

2 Q Okay. And that conversation, again, it was not based upon
3 a negative assessment of Nistel's performance, correct?

4 A No.

5 Q It was purely in terms of a cost saving mechanism?

6 A Correct.

7 Q Okay. And you talked about the things that needed to
8 happen, and one of which you discovered that need to happen to
9 pursue this course were Warn Notices to be sent to the
10 bargaining unit employees, correct?

11 A Correct.

12 Q Now, let's just focus for a second with respect to the
13 pension program. So Nistel had its own pension plan? Did that
14 cover bargaining unit employees or just the back office folks
15 that you were talking about?

16 A No, I believe it covered both.

17 Q Okay. And there was some discussion about terminating
18 that plan since Nistel was going --

19 A Yeah. If you're going to terminate -- one of the things
20 that I remember Greg telling me is that "Well, if we're closing
21 Nistel then we've got to obviously close the plan." And so
22 they began to -- the process of doing that.

23 Q Okay.

24 MR. ESTOCK: I'm sorry. Just for the record you mean Greg
25 Howard?

1 THE WITNESS: Right, right.

2 HEARING OFFICER TURNER: And Greg is?

3 THE WITNESS: Greg was the -- which entity does he work
4 for?

5 THE WITNESS: Health Alliance.

6 HEARING OFFICER TURNER: Health Alliance, okay.

7 THE WITNESS: Yes. Health Alliance. He was the vice
8 president of HR for Health Alliance at the time.

9 MR. VITALE: Okay.

10 BY MR. VITALE:

11 Q So you're having this -- or someone from HR is having this
12 conversation with Mr. Policastro in or about March?

13 A Uh-huh.

14 MR. VITALE: And the record reflect that there were
15 communications to the Union, to Nistel, in or about March about
16 this plan.

17 BY MR. VITALE:

18 Q Did you have any role in the issuance of the Warn Notices
19 that went out in April?

20 A Yes. Howard and I -- I became more directly involved when
21 we started to talk about the communications so a copy of the
22 draft of the Warn Notices came to my desk and we went back and
23 forth a number of times about what those should look like.

24 Q And I don't want to delve into --

25 A Sure.

1 Q -- you know, the specifics of your conversation but is it
2 fair to say that in the course of getting up to speed on the
3 Warn Notices you knew that there was a certain amount of days'
4 notice that you had to give the bargaining unit?

5 A Correct.

6 Q Okay. And was it approximately 90 days' notice?

7 A We were working towards 90 days.

8 Q Okay.

9 A Exactly.

10 Q Did you have any discussion or contemplate not issuing
11 Warn Notices that were issued in April not issuing them until
12 September, October, November of 2014?

13 A Not at all. The only discussion about not issuing Warn
14 Notices was right upfront when we decided to close, we just
15 thought we'd send out something at close and legal counsel
16 advised us, based on the law, that you had to go in this route,
17 this is what you needed to do.

18 Q I see.

19 A So after that was told there going to be Warn Notices.

20 Q Okay. So as a matter of trying to effectuate, to pursue
21 this process that you wanted to do, and then in this avenue of
22 shutting down Nistel, is it fair to say but for the 90 day
23 requirement of the Warn Notices you actually would have
24 preferred to have done it sooner? You would have done it in
25 March or April if you could have but you had to wait until

1 these notices and make it late July, early August?

2 A I don't know that we would have done it immediately
3 because we wanted -- there were other things that we needed to
4 just get into place, but, yeah, we probably wouldn't have
5 waited the whole 90 days. But it wasn't the kind of thing
6 where we were going to say, "This is Friday and on Monday it's
7 no longer going to happen."

8 Q I got you.

9 A Yeah.

10 Q Other than issuance of Warn Notices and the dealing with
11 the Nistel Pension Plan and had --

12 A Yeah.

13 Q -- to wind down that pension plan, were there any other
14 things that you were aware of that Nistel needed to do before
15 it would go out of business?

16 A No, those were from a Health Alliance standpoint, those
17 were the major issues.

18 (Pause)

19 BY MR. VITALE:

20 Q When was it that you first learned that a decertification
21 petition had been filed with Region 3 on June 17th?

22 A I guess we learned about the petition right after it was
23 filed, you know, I don't know the exact date but it had to be
24 within a -- you know, a couple of days.

25 Q Okay. Well, let me state that again. It's part of the

1 record and fully developed is that on Monday, June 23rd there
2 were communications from -- in the morning from counsel for
3 Nistel and NYSNA in which counsel confirmed that Nistel still
4 hadn't intended to close by August 8th.

5 A Right.

6 Q That later that morning there was an announcement from
7 Region 3 that light of the Warn Notices that had been issued
8 two months earlier the Region was not going to be taking any
9 immediate action on the decertification petition, and later
10 that same day at 1:06 p.m., counsel for Nistel were informing
11 Region 3 that they have rescinded its decision to close. So to
12 set that out of -- that was a busy Monday, June 23rd --

13 A Right.

14 Q -- when was it that you first had any discussions -- I'm
15 sorry. Did you play any role in the decision to rescind the
16 Warn Notices?

17 A Yes.

18 Q Okay. And were you the principal decision maker?

19 A I'm the one who started -- asked the question and started
20 it, and then obviously had to talk to other senior management
21 people, but most of it resides with me, right. And then the
22 final decision was a combination of the president, myself and a
23 few other people.

24 Q Okay. So if Monday was the 23rd --

25 A Right.

1 Q -- that means the previous Friday was the 20th --

2 A Right.

3 Q -- right? That means Tuesday was the 17th. So I'm
4 assuming if you're going to be rescinding the Warn Notices in
5 light of the decert petition that's happening somewhere between
6 the filing of the petition on Tuesday the 17th and 1:06 on
7 Monday the 23rd?

8 A Absolutely. As I testified within the short period of
9 time after learning that, correct.

10 Q Okay. So -- and I think you were saying that you didn't
11 start to think about reversing the Warn Notices, on the 23rd
12 you had started to discuss that?

13 A Right. Actually the thought had occurred probably on that
14 Thursday in that there was communication with Jane Vicente, who
15 is the director of surgical service, and some others actually
16 in the operating room that had become -- you know, becoming
17 increasingly difficult because the folks who had filed the
18 decertification petition were feeling very strong about, you
19 know, wanting that filed to have an election and what they
20 wanted to do. Tempers on both sides were running a little bit
21 hot.

22 So in communication with Jane, both in terms of come
23 conversations, and I believe there's an e-mail or two in there
24 somewhere, that, you know, you know, it's getting tough to
25 manage because, you know, some people are mad that they're

1 going -- not going to be able to have an election. Other
2 people are saying, "Well, we didn't need an election, we didn't
3 want to sign the stupid petition anyway", and it was, you know,
4 just kind of becoming one of those situations.

5 So in talking with her I said, "Well, what do we do to,
6 you know, kind of, you know, calm everybody down?" And they're
7 not calming down at all if there's not going to be an election,
8 you know, people are feeling like they, you know, kind of had
9 the rug pulled out from underneath them.

10 So in a conversation, and Howard and I had been talking
11 about, you know, Warn Notices and all these things going on and
12 I happened to just throw forth the idea, I said, "You know,
13 what? Given in light of -- was we started to think about
14 consolidating, the accounting department wasn't going to be
15 able to assume all of the Nistel things without bringing either
16 some of those Nistel management people onboard anyway so the
17 savings on that was probably not going to be what was
18 anticipated. The fact that we've got a lot of employees up in
19 arms because they're not going to be able to have an election",
20 you know, -- for all of those things I just happened -- I said,
21 "You know what? I wish we never even started this. The
22 savings aren't going to be significant enough to warrant going
23 through this. I wish we had never even started, I wish I could
24 pull them back."

25 And then I -- in the conversation I remember saying,

1 "Well, Howard, legally can't we do that?" And that was like on
2 Friday I believe. And he said, "You know, that's a very
3 interesting question, I don't know that that's ever been done,
4 or how has it been done?" And so he got off the phone, talked
5 with some of his folks and came back and said, "You know what?
6 We're scratching our heads but we think you probably could if
7 you really wanted to", and I said, "Well, I kind of threw that
8 out there in more frustration of the moment, but let me think
9 about that a little bit. And then also I don't make that
10 decision myself. Let me talk to our president. Now he's --
11 I'm going away part of the weekend, he's going away part of the
12 weekend, I'll try to get in touch with him and let's talk
13 Monday, you know, if that's possible."

14 I did chat with him over the weekend and said, "Look, I
15 think there's going to be a number of ramifications if we go
16 this way, not the least of which people think we're going to be
17 absolutely nuts, but given what I'm being told by Jane and some
18 of the folks, given some of the dissension and frankly I feel I
19 want our people to be able to have an election or not. Whether
20 they keep the union or don't keep the union is immaterial. If
21 they're upset about not being able to have the election I think
22 we ought to go ahead, withdraw them and let them have the
23 election", you know,.

24 And Dave said, "You know, why not?" And so I call Howard
25 Monday morning and said, "Howard, you don't have to play golf

1 today" because I remembered it was the golf tournament, " need
2 you to actually put this in place."

3 Q And just so we're clear.

4 A Right.

5 Q You're talking about talking to the president and you
6 mentioned Dave --

7 A Right.

8 Q -- you mean Dave Scarpino?

9 A Dave Scarpino, yes.

10 Q Okay. So President Scarpino agreed with your suggestion
11 that you rescind the Warn Notices?

12 A Right.

13 Q Earlier when I asked you about the fiscal motive to close
14 this down you talked about the savings of certain salaries?

15 A Correct.

16 Q And you ballparked them around 125 --

17 A Correct.

18 Q Was it your understanding that the people who went into
19 those salaries were going to become Benedictine employees and
20 therefore you weren't going to realize any savings, or --

21 A No, we -- when we started -- basically some of the
22 functions, one person is primarily an office person, the other
23 person, Sherry, is primarily HR and a number of other issues.
24 The original thought was if those positions were eliminated the
25 current people in the departments could pick up those functions

1 because those nurses will just come back and be Benedictine
2 employees.

3 But as I started talking about some of the accounting
4 functions there was a discussion about, well, you know, I don't
5 know who's sitting around with not anything to do to pick up
6 all the -- you know, the accounting functions that went on, the
7 billings, and you know, the stuff that has to be done. And HR
8 even said, "Well, you know what? You got -- that's another 'X'
9 number of people plus it's the bargaining unit, you know, we're
10 not sure whether you just eliminate that or we need to have
11 additional resources."

12 So that decision was never fully vetted about what that
13 would look like but there was some discussion at that point in
14 time about we may need to keep -- you know, hire -- Nistel
15 closes they get hired on the Benedictine side to handle some of
16 the functions that they were doing before. We never got far
17 enough down the road because at that point we decided we were
18 going to keep Nistel open.

19 Q Okay. Is it fair to say that if you thought you were --
20 that closing Nistel was going to save 125 annually --

21 A Right.

22 Q -- when you started to hear about the difficulty in
23 managing the folks and the desire for an election you decided
24 that it was more important to have that election take place
25 then to start realizing that even it was 125 just start

1 realizing any savings?

2 A Right. Those things -- the savings were not -- the cost
3 of the -- or the benefit of the savings is the way I would put
4 it, is not worth the cost of what was going on with the
5 employees.

6 Q Okay. At what point is the decision that you reached over
7 the weekend then announced to counsel on Monday the 23rd, when
8 was that decision conveyed to Nistel?

9 A I believe, if I remember, Howard told me that there was --
10 in the morning we talked, later that day I believe he talked to
11 was it Tom Darby or one of the people on the union side to, you
12 know, with the union, and then --

13 HEARING OFFICER TURNER: This is Monday?

14 THE WITNESS: Monday, right.

15 HEARING OFFICER TURNER: Okay.

16 THE WITNESS: On that Monday, yeah. And in terms of
17 Nistel it was the same thing because Howard at that point was
18 also representing Nistel. He was going to contact Don
19 Policastro and the Nistel people to let them know. And so
20 there was sort of -- by the discussion we had in the morning
21 and then in the afternoon these calls and communication were
22 kind of going out to all the people involved, basically.

23 MR. VITALE: Okay. Can you show the Witness Union Exhibit
24 11?

25 (Pause)

1 HEARING OFFICER TURNER: The Witness has Union's 11.

2 MR. VITALE: And just so we're clear, this is the redacted
3 minutes from April 25th's Health Alliance board meeting. And
4 on page 3, or on the third page of Union Exhibit 11 --

5 THE WITNESS: Page 7 on the --

6 MR. VITALE: Page 7.

7 THE WITNESS: Right.

8 MR. VITALE: Of the actual document.

9 BY MR. VITALE:

10 Q There was a bullet point talking about the pension plan
11 and part of what was going to go on was bargaining unit
12 employees who were under the Nistel Pension Plan were going to
13 be able to rollover into Broadway campus pension plan?

14 A There -- right, that section comes from the HR committee.

15 Q Okay. There was also a bullet point about cashing out for
16 terminated individuals. Now, those terminated individuals are
17 folks at Nistel?

18 A Right. What would have happened there is if someone
19 actually had money in the plan but had terminated so there
20 would be a payout for them, you know, up to -- there were
21 limits and I -- and again, I don't know the exact ones but
22 depending on how long you were in the plan, how much money you
23 were going to get, below a certain threshold what they like to
24 do is just pay it out, dollar amount above a certain amount
25 then you're actually still in the plan and the money is

1 invested is one --

2 Q Do you know how many -- just broadly speaking, how many
3 terminated individuals there were going to be?

4 A Off the top of my head I don't know.

5 Q But -- I'm just trying to understand the Health Alliance,
6 Nistel, you were explaining that part of the motivation, the
7 motivation to close Nistel would be to save certain salaries
8 and you identified the back -- three back office people --

9 A Right.

10 Q Are these folks that's referenced here, those three
11 people, or is some other back office people who would not be
12 employed at Benedictine?

13 A I'm not sure. I am not sure. Also what that's referring
14 to is the Health Alliance Broadway plan the amendment there --
15 so it's saying there's a couple of things, we're going to
16 include the Nistel people but these cash-outs and stuff refer
17 to anybody in the Kingston plan not just the Nistel plan. In
18 other words in the Kingston plan for all Kingston employees
19 people who left they were amending the plan so that if it was
20 less than \$5,000 in the plan we were going to pay that out.
21 Previously they didn't have that option in there so people had
22 these small amounts in and the company was coming back saying,
23 "Hey, we're managing this account with \$1,000 in it. It's
24 ridiculous", so that's not necessarily referring just to
25 Nistel, it's with the Kingston plant. I'll hand this back in I

1 guess.

2 Q Okay. Could you please look at Union Exhibit 12(b)?

3 Actually, if you have 12(a), just for quick context.

4 A Uh-huh.

5 Q Union Exhibit 12(a) are the minutes of the Health Alliance
6 board meeting on June 27th, those minutes reference on page 2
7 of the document and on page 4 of the minutes, a handout, an
8 informational handout that explained the reasons for the
9 decision to keep Nistel open, and 12(b) is that handout,
10 correct?

11 A Correct.

12 Q And in the handout it says "Both" -- I'm reading at the
13 very beginning, "Both Nistel and Health Alliance felt that it
14 would make good business sense not to disturb the status quo".
15 Based upon your testimony though it was -- it seemed like it
16 was more Health Alliance decided that it made sense to not
17 terminate Nistel --

18 A Correct. But obviously after we communicated with Don
19 Policastro, if he had come back and went wait a minute, you got
20 to stop. So, you know, yes, there was -- we made the decision
21 this is what we wanted to do but he obviously had to agree with
22 it or it wouldn't have gone forward.

23 Q Okay. Well, let me -- we talked in the beginning about
24 termination of the lease agreements and that there was never a
25 formal termination of the lease agreements, but when you

1 announced your intended plan to Mr. Policastro he didn't
2 object, correct? To close Nistel.

3 A As far as I know.

4 Q He didn't stand on ceremony and say "Where's my written
5 notice that I'm entitled to", correct?

6 A No, not that I'm aware of.

7 Q Similarly when you're -- when on June 23rd it's being
8 communicated to him that in fact there's a reversal and the
9 Warn Notices will be rescinded and that Health Alliance
10 actually choses to maintain the status quo and continue its
11 relationship with Nistel --

12 A Right.

13 Q -- you're not aware of any comments by Mr. Policastro --
14 or by Policastro or Nistel about, "Well, forget it, you've
15 already given me termination so it's a" --

16 A Not aware of anything like that at all.

17 Q Okay. On June 23rd when you were making the decision to
18 rescind the Warn Notices you're doing so that the vote can go
19 forward, correct?

20 A Correct.

21 Q And you --

22 MR. ESTOCK: I'm sorry, I just didn't -- about the what?

23 MR. VITALE: The decertification vote to go forward.

24 MR. ESTOCK: Okay, thank you.

25 BY MR. VITALE:

1 Q And as we sit here today are you aware that in fact the
2 election did take place?

3 A Yes. And the box was sealed and pending the outcome of
4 what we're here today, unseal the box or not.

5 Q Okay. So once -- if and when the box is opened is there
6 any continuing need to stay with Nistel?

7 A Yeah. At least the current plan now is that as far as we
8 can see and far into the future, and again healthcare changes
9 dramatically, you know, as we go on, don't see any reason why
10 we wouldn't continue with Nistel. The -- if you go down either
11 track, if in fact the nurses elected to decertify they do not
12 have a union. If we were then to say, "Okay, we're going to
13 close Nistel based on the equalization agreement", I would then
14 have to turn around to half of the nurses and go "Half of you
15 people now have to go into the union after you decertified it."
16 If you thought there was an uproar before, you know, so we're
17 not going to go there.

18 If they decided to keep the union then we simply have the
19 bargaining unit the way that it had been before, we can -- we
20 would -- whenever the contract is up we'll negotiate again.
21 But trying to then bring them back in you'd still have all the
22 issues with some of the people who didn't want to be in the
23 union, some -- if you brought the entire bargaining unit in
24 then there would be a dispersant balance or how do you make
25 that -- it becomes more and more complicated. So the plan

1 right now is we'll just simply keep Nistel open.

2 Q Okay. Has Health Alliance's finances improved such that
3 you no longer need to save money wherever you can and a potential
4 savings of \$125,000 annually is no longer needed?

5 A No, finances are certainly not improved. We are
6 constantly looking at ways in improving the finances. But
7 again, at what cost, you know. In other words the dollar
8 amount isn't the only cost. We value our employees, their
9 input, their general wellbeing tremendously, and to have a
10 situation whereby we save a couple of dollars and again have a
11 huge segment, a very important -- I should mention this, a very
12 important part of our population, the nurses in the OR is
13 because OR is one of the few places in a hospital you make
14 money on surgery, have them very disgruntled is just not good
15 business. So the reality is there would be no reason to go
16 forward and have, you know, create the situation we're trying
17 to correct with keeping Nistel open by just recreating that
18 again sometime in the future.

19 Q Let me -- are -- do you have any familiarity with what
20 number of votes is required to succeed on the decert petition?

21 A As I understand it's a simple majority.

22 Q Okay. So you are allowing for the possibility that the
23 union -- NYSNA remains as a collective bargaining
24 representative, by razor thin margin in which of the
25 approximate 44 Nistel nurses 20 voted against but 24 voted in

1 favor so you're non-professional understanding would be that
2 the union would remain as the representative, are you not
3 concerned about going forward with the plan of now you have 20
4 upset nurses who wanted to no longer be represented by Nistel
5 being -- by NYSNA being given the bad news that they're moving
6 over to Benedictine and staying with the union?

7 A Of course I'd be concerned, but as -- I think implicit in
8 your question unless something radically unforeseen happened
9 this is going to be razor thin one way or the other based on
10 the -- just the dynamics of it so you're going to have half of
11 the people in the OR upset one way or another regardless of
12 which way we go, and that's going be a significant management
13 problem for us going forward.

14 Q And as one of the people who is going to have a role in
15 that HR decision if you're going to have a significant
16 population that's upset no matter what happens wouldn't it make
17 sense at that point to say, "Well, now I'm going to grab those
18 125,000 coins on the table" and realize those savings?

19 A No, because again, at least in my opinion, that 125
20 whatever the number would come to be, is not going to be worth
21 going through trying to go through, you know, sending out more
22 Warn Notices. What are you guys doing to change your mind a
23 third time? It's just going to create more and more
24 unsettledness.

25 The number one thing we have to do for the entire

1 organization, and in both with Nistel and in the OR is settle
2 things down and get back to some degree of normalcy, whatever
3 that word means, and changing direction for another time would
4 just be counterproductive to anything we're trying to do.

5 Q Well, isn't it also fair that in terms of like having no
6 unsettledness isn't Health Alliance also aiming towards closing
7 one of -- closing the Kingston facility and combining it and
8 consolidating it into the Benedictine facility?

9 A Absolutely. The economics of health care is you cannot
10 run two full service hospitals several blocks apart and stay in
11 business. So we are definitely aggressively moving towards
12 consolidating onto the Mary's Avenue campus.

13 Q And particularly if those two hospitals, and this is
14 something in the press, where each hospital have open, I mean
15 have felt, right?

16 A Correct.

17 Q All right. So you're still pursuing those even though it
18 might, if you pursue and succeed and complete the
19 consolidation, it could have its own host of unsettlement?

20 A Absolutely. But in one case the unsettledness is
21 absolutely required because if you don't go through that
22 unsettledness you're going to be out of business. And the
23 other case it's not going to put you out of business so you're
24 going to try to keep it as calm and representative for the
25 employees as possible.

1 Q Okay.

2 (Pause)

3 MR. VITALE: Mr. Hearing Officer, could you show the
4 Witness Union Exhibits 14 and 15 please?

5 HEARING OFFICER TURNER: He has them.

6 BY MR. VITALE:

7 Q Mr. Marsicovete, Union Exhibit 14 is a draft of the July
8 2nd letter. Did you have any role in reviewing this document?

9 A I did.

10 Q And Union Exhibit 15 is a fact sheet, or actually a two-
11 page fact sheet and its prior versions. Did you have any role
12 in reviewing the fact sheet?

13 A I did.

14 Q Okay. Is it fair to say, because a quick review seems to
15 -- seemed to say that a lot of what was going to be in the July
16 2nd letter or some of the points that were going to be made in
17 the July 2nd letter wound up being made in the fact sheet? Did
18 you have any role in deciding whether it be a letter verses the
19 fact sheet?

20 A It would -- you know, I probably did but I don't really
21 remember. I do know, looking at both documents, and I believe
22 the one was not sent out, that it had been prepared but never
23 actually went out, and I'm not really sure about the reason it
24 didn't. And I do know that one of the comments I did make at
25 some point is that, you know, when you sent out things that are

1 this long my experience has been, you know, people kind of read
2 but don't read. Can we get this down to two pages and get the
3 message simpler, guys? And, you know, I think that that
4 obviously is what's represented. But, you know, sitting down
5 and editing or anything like that I really don't remember
6 actually doing that.

7 Q Okay. And not -- and I'm saying this with good nature.

8 A Sure.

9 Q Not that I'd expect your answer to change but when you
10 were at counsel's table you made some comments when you weren't
11 under oath, and I just wanted to get them on -- with -- in
12 terms of when you thought the fact sheet actually was posted
13 under a circulated -- we were all scratching our heads and
14 noting that it was making a reference to the date June 27th, so
15 we all concluded it was probably at some point on or after June
16 27th, and I think at counsel's table you speculated it may not
17 have been until the beginning of July that it got circulated.

18 A Yeah, I was thinking -- and I forget, I forget the date,
19 but I know we got it done and then there was a couple of like
20 back and forth, we were getting input from a number of people,
21 so I think it took a day or two, a couple of days, so I'm
22 looking at 27, to I'm thinking -- I forget, when -- the 4th of
23 July was a Friday was it this year, Thursday? So I think it
24 was the beginning of that following week, so it may have been
25 the 30th or the 1st or something like that is when it actually

1 went out.

2 Q And in terms of the posting or circulation to your
3 recollection what -- how was this -- was this put in nurses' --
4 did they have mailboxes? Was there a general bulletin board
5 where you --

6 A We give it to Jane, who is the director there, and she
7 distributes it. I believe that it is certainly posted,
8 physically posted. I think some of the folks do have e-mail
9 and then it's also electronically sent, but I'm not sure about
10 all the nurses, I don't know if all the nurses actually have an
11 e-mail, but some of the other people in the group do and it's
12 e-mailed to them.

13 (Pause)

14 BY MR. VITALE:

15 Q At the first day of hearing there was testimony about the
16 Health Alliance's need to affiliate with a larger fiscally
17 sound partner, and that in 2013 Health Alliance's CEO announced
18 that it was Health Alliance's goal to affiliate with a larger
19 fiscally sound partner, and from press reports it seems as if
20 the current CEO of Health Alliance is -- has that still on the
21 table of one of the ways to solve Health Alliance's fiscal
22 problems is to partner with a larger more fiscally sound
23 partner --

24 A Correct.

25 Q In your June 23rd or June discussions until now have you

1 given any thought as to whether continuing the Nistel
2 relationship, even though at some monetary cost, you're doing
3 it for the non-monetary reason of trying to have employee
4 harmony, is that a fair term to use?

5 A I think that's fair.

6 Q And in your mind in doing the balancing the approximate
7 125,000 in annual savings wasn't worth the costs?

8 A Uh-huh.

9 Q Have you considered whether they continuing the Nistel
10 relationship also has the -- any negative impact upon Health
11 Alliance's continuing goal to find a larger more fiscally sound
12 partner with which to affiliate?

13 A Yeah, we have thought about. It doesn't have a negative
14 impact at all. The negotiations or the discussions with other
15 entities have continued throughout that time period and the one
16 area, I think I had mentioned before, surgery is huge for
17 hospitals going forward based on changes in the Healthcare Act
18 and the rest.

19 Most of the discussions were centered about going to the
20 Mary's Avenue campus because that's where most of our surgery
21 is performed. The surgeons made it very clear to us that that
22 was the campus of preference which is why it was chosen. And
23 most of the discussions had centered around recruiting doctors,
24 particular surgeons to come into the area so we can grow that
25 business, because if you don't have a robust OR you're not

1 going to survive in healthcare. So everything is -- much of
2 those discussions are centered on that exact issue, bringing
3 surgeons in, increasing the OR volume, I mean all of those
4 kinds of things. And at no place in any of those discussions
5 has Nistel been any issue or hindrance to that at all.

6 Q Well, just so -- I wasn't -- there isn't any discussion
7 that closing Nistel would mean the substitution of OR services,
8 correct?

9 A No.

10 Q You're plan was to have that be done by people on the
11 Benedictine payroll?

12 A Right. Taking -- and the closure would have simply been
13 taking those people and bringing them back into Health
14 Alliance. Some would have gone onto the Benedictine payroll,
15 some would have gone onto the Broadway payroll, you know, it
16 would have been --

17 Q The Kingston payroll?

18 A Kingston payroll, right. But, yeah, it would have -- it's
19 just simply a matter of where they sit from an organizational
20 standpoint.

21 Q I appreciate that, but so given that -- we're not talking
22 closing OR services, you're telling me the potential savings of
23 \$125,000 annually does not matter to a potential partner, and
24 they -- a potential partner would say I want to partner with
25 you because of this important OR services and it doesn't matter

1 that we're paying 125 to backroom people at Nistel?

2 A I don't -- it's never come up, let's put it that way, it's
3 never come up. But also remember that these -- we have not yet
4 officially partnered with anyone. There had been discussions.
5 The nature of those partnerships are still on a -- I'll call it
6 the 20,000 foot level, we haven't actually delved into, you
7 know, nuts and bolts and all. They are very aware of the
8 situation with Nistel, they're very aware of most of the things
9 we've talked about here, that we were going to close, we
10 weren't going to close, that it's open, I mean they're all
11 aware of those high level things but we haven't gotten into
12 discussions on actual economics of it.

13 (Pause)

14 MR. VITALE: If I could take a moment?

15 HEARING OFFICER TURNER: Sure. Off the record.

16 (Whereupon, a brief recess was taken.)

17 HEARING OFFICER TURNER: Back on the record.

18 BY MR. VITALE:

19 Q Mr. Marsicovete, did you have any familiarity with any of
20 the pension issues that needed to be addressed?

21 A Just from a higher level administrative effort. Once the
22 decision was made to close Nistel clearly we had to, you know,
23 address the pension issue. So at the time our VP of HR, Greg
24 Howard, was looking into that, what had to be done. And I just
25 got, you know, an overview, you know, questions about could

1 they roll it --

2 Q Let me ask this more specific question.

3 A Sure.

4 Q So in -- is it fair to say that in March when the decision
5 was made to -- by Health Alliance to cease its relationship
6 with Nistel one of the avenues that started to be pursued was
7 the Warn Notices that wound up being sent in mid-April,
8 correct?

9 A Correct.

10 Q And another issue was the termination of the Nistel
11 Pension Plan, correct?

12 A Correct.

13 Q And to your knowledge the termination of the pension plan
14 steps were actively taken between March and June 23rd to
15 effectuate that termination, correct?

16 A Correct.

17 Q And are you aware that after June 23rd and your decision
18 communicated to counsel and to Nistel that you're going to
19 rescind the Warn Notices and Health Alliance will continue its
20 relationship with Nistel, are you aware that the folks working
21 on terminating the Nistel Pension Plan continued to work on
22 terminating the Nistel Pension Plan?

23 A I'm more aware of it today after hearing everything I hear
24 than I was at the time, yes. I mean I knew there was a lag but
25 I was under the impression it was a little bit shorter than it

1 turns out that it was.

2 Q Okay. And based upon what you heard today is it now your
3 understanding that even through July and early August the folks
4 that were attempting to terminate the Nistel Plan were still
5 attempting to terminate the Nistel Plan?

6 A That's what I heard today, and I'm scratching my head a
7 little bit so I'm not sure how the word didn't pass down and
8 through, but it's abundantly clear from the documentation it
9 didn't.

10 Q And as we sit here today on December 8th has Nistel's
11 Pension Plan "B" reactivated?

12 A Yes. As a matter of fact I don't -- I'm not sure but I
13 don't believe it would -- they ever actually got to closure
14 completely, but they stopped the process, reversed it and
15 everything is now back to the way it was.

16 Q Okay. And do you know when the reversal was completed?

17 A I don't have an exact date; I know that it was --

18 Q Sometime around September?

19 A It had to be early -- I was going to say fall, yeah.
20 Somewhere in fall because I remember getting a report from
21 Greg, yeah. I'm trying to think of the date. I'd be
22 speculating, but, yes, it -- somewhere in that time frame they
23 completed the work on it.

24 Q Okay.

25 MR. VITALE: I have no further questions.

1 HEARING OFFICER TURNER: Mr. Estock?

2 MR. ESTOCK: Yes, a few.

3 HEARING OFFICER TURNER: Okay.

4 CROSS-EXAMINATION

5 BY MR. ESTOCK:

6 Q Beginning of -- end of 2013, beginning of 2014, just some
7 preliminary questions, what were the major crisis that were
8 facing Health Alliance?

9 A The same ones that had been -- you know, for the last
10 number of years. The volumes continue to decrease based on the
11 fact that less people are coming into the hospital and both
12 from a technology standpoint and a reimbursement standpoint
13 payers are paying to have people treated in the doctor's
14 offices, the clinics and places like that as opposed to a
15 hospital. So we're not a typical -- that most hospitals,
16 particularly in New York right now, because this happened in
17 other parts of the country before, you know, volumes are
18 continuing to dip, and so it creates a real crunch, you know,
19 for the hospitals in terms of their liability going forward.

20 Q And is it fair to say that these issues were what were
21 driving you towards the -- finding a partner or somebody to
22 affiliate with?

23 A Yeah. The partnership is based on basically three things.
24 We have to consolidate to one campus, there's just no option
25 with that. Number 2, we have to recruit and bring docs into

1 the region and by ourselves we're not able to do that. And I
2 mentioned before particularly in the areas of surgery and some
3 specialties. And then the capital to be able to do all that.
4 We do not -- you know, we have loses now, we don't have capital
5 necessary to do the construction and refitting of the campus,
6 to fit everything into one campus, so partnership is really the
7 only way we've got to go to have a viable future.

8 Q Okay. Compared to these aspects how does Nistel fit in
9 there as compared to these?

10 A Well, Nistel -- and again, the reason for Nistel existing
11 went away when the formally Benedictine Hospital, why it was
12 even -- remained Mary's Health Alliance Hospital at Mary's
13 Avenue. The religious and ethical directives that guided the
14 fact that Nistel was created were no longer important. Also
15 from a very practical standpoint abortions were not being
16 performed in the surgery center anymore, matter of fact very
17 few are performed now in hospitals with the advent of pills and
18 a lot of things have just changed in a couple of years.

19 So the reality is that Nistel fits into it in the sense
20 that, you know, that's who the nurses work for, we contract
21 with them to provide our nurses, OR nurses are critical to what
22 we do so they fit into the overall portfolio of who and what we
23 are.

24 But going forward, as I mentioned before in my testimony
25 given the unsettledness of what took place with the

1 decertification but which when we anticipated closing it we
2 hadn't -- we didn't know there was going to be a decert
3 involved.

4 You know, the cost savings there doesn't justify the --
5 you know, the upheaval and everything that it was created --

6 Q Talking about the -- -- I believe -- well, I'll ask a
7 question rather than -- the figure of 125,000 was mentioned, at
8 any point did you have reason to question whether you would
9 save that much?

10 A Sure. And again I was asked and like that's an estimate,
11 I don't off the top of my head know, but, yeah, as we started
12 to talk about it, if you can't absorb that function into a
13 person or people already in the organization doing it you then
14 have to bring one of those people, or hire one of those people
15 in and that diminishes your cost savings.

16 Also I think -- and I know from the questions of counsel,
17 I think it's fair to also say we're talking about consolidating
18 and what we're talking about, we're talking in the millions of
19 dollars here, we're talking 14, 15 million dollars a year,
20 savings in terms of getting to one campus and all. So I would
21 never -- and if I indicated that I will say I'm sorry for that,
22 I would never say that \$100,000 is not important, but in the
23 large scale of what we have to do to consolidate it all the
24 \$100,000 pales compared to the millions we have to consolidate
25 to be able to get to one campus to have a viable future.

1 Q Okay. Thank you. In your direct testimony -- in your
2 testimony to the Union's counsel you said that people were
3 still working on the termination of the pension plan after June
4 d23rd, was that people internal to the -- to Health Alliance or
5 was it others? I mean there were brokers and lawyers working
6 out there as well.

7 A There would have to have been -- it would have to be a
8 combination because I would assume the brokers and lawyers
9 would not keep working without direction from somebody
10 internally, but again that's -- you know, what happens when you
11 assume, but it's simply an assumption on my part. But I am
12 scratching my head about how the -- it was -- Warn Notices were
13 rescinded. We talked about it at staff meetings, we talked
14 about it at board meetings, so I'm scratching my head like how
15 could two months go by and people were still working on it, but
16 then again I've seen stranger things happen.

17 MR. ESTOCK: No further questions. Thank you.

18 HEARING OFFICER TURNER: Ms. Lydecker, do you have any
19 questions?

20 MS. LYDECKER: I don't.

21 HEARING OFFICER TURNER: Okay. Mr. Vitale anything
22 further?

23 MR. VITALE: No.

24 HEARING OFFICER TURNER: Okay. You're excused, sir.

25 Thank you very much. We might recall you but we'll save that

1 for another time.

2 (Whereupon, the witness was excused.)

3 HEARING OFFICER TURNER: And we are down to our last batch
4 of documents.

5 MR. ESTOCK: Yes. In discussions while you were out of
6 the room but in the presence of counsel the witness started
7 talking to me and promised not to talk about his testimony, but
8 did chat with me about the attorney/client privilege.

9 HEARING OFFICER TURNER: Okay.

10 MR. ESTOCK: Causing me to remember that it's not my
11 privilege to waive and so maybe if my client and I could have a
12 two minute adjournment --

13 HEARING OFFICER TURNER: Yes, of course.

14 MR. ESTOCK: -- maybe I can take care of some of these --

15 HEARING OFFICER TURNER: That's fine. Let's go off the
16 record for that purpose.

17 (Whereupon, a brief recess was taken.)

18 HEARING OFFICER TURNER: Back on the record.

19 Okay, and I believe we are down to -- while we were off
20 the record the Employer has produced a number of other
21 documents to the Union responsive to the Union's subpoena.
22 There's one document remaining, one e-mail chain remaining that
23 the -- I don't want to put words in your mouth, Mr. Estock, but
24 you're asserting that there's an attorney/client privilege --

25 MR. ESTOCK: Yes.

1 HEARING OFFICER TURNER: -- associated with the employees?

2 MR. ESTOCK: Correct.

3 HEARING OFFICER TURNER: Okay. And off the record we did
4 this already and now we're doing it on the record. Mr. Estock,
5 are you prepared to -- excuse me, a privilege log in connection
6 with this e-mail, correct?

7 MR. ESTOCK: I did.

8 HEARING OFFICER TURNER: Okay. My understanding from
9 reviewing the transcript from the first day of hearing a couple
10 of months ago was that we left off with Employer's 1, so I
11 think we need to mark that as Employer's 2, which is --

12 MR. ESTOCK: The document itself?

13 HEARING OFFICER TURNER: Not the document itself, no, the
14 log, I'm going to put the log into the record.

15 MR. ESTOCK: Oh, okay.

16 HEARING OFFICER TURNER: Not the document, the log.

17 MR. ESTOCK: All right. And you've got a copy of it?

18 HEARING OFFICER TURNER: I have a copy of the log for
19 myself.

20 MR. ESTOCK: Okay.

21 HEARING OFFICER TURNER: It's actually -- I don't see why
22 I can't give that to Joe.

23 MR. ESTOCK: Yeah.

24 HEARING OFFICER TURNER: And actually let me make a couple
25 of copies and --

1 MR. ESTOCK: All right.

2 HEARING OFFICER TURNER: -- actually why don't we mark
3 this as Employer's Exhibit 2 and we'll go the record and I'll
4 make a couple of copies --

5 MR. ESTOCK: Okay.

6 HEARING OFFICER TURNER: -- for the other two parties.

7 (Employer's Exhibit 2 identified.)

8 HEARING OFFICER TURNER: Back on the record.

9 Okay, all right. And while we were off the record the --
10 Mr. Estock, if you'd like to offer Employer's Exhibit 2?

11 MR. ESTOCK: Yes.

12 HEARING OFFICER TURNER: Any objection to Employer's 2?

13 MR. VITALE: No.

14 HEARING OFFICER TURNER: Okay. Without objection
15 Employer's 2 is received.

16 (Employer's Exhibit 2 received.)

17 HEARING OFFICER TURNER: While we were off the record, I'd
18 like to confirm, Mr. Vitale, had asked for an *in-camera*
19 inspection of the document at issue. I have reviewed the
20 Employer's privilege log and I have reviewed the document in
21 question, the e-mail chain most recently from the July time
22 period. It's my view that the document is covered by
23 attorney/client privilege and for that -- therefore the
24 document I don't -- my ruling is that the document should not
25 be produced in connection with the subpoena so therefore I will

1 not be putting the document into the record. I will be, so
2 it's clear for the record, maintaining a copy of the document
3 in our office here, separate and apart from the record which I
4 will do now.

5 Go ahead.

6 MR. VITALE: Lick away.

7 HEARING OFFICER TURNER: Okay, go ahead.

8 MR. VITALE: I just want -- if I understand correctly,
9 Employer 2 I have no objection to --

10 HEARING OFFICER TURNER: Yeah.

11 MR. VITALE: -- but in the upper right-hand corner it
12 talks about page 1 of 4, including three page attachment.

13 MR. ESTOCK: That is the e-mail string.

14 MR. VITALE: Okay.

15 HEARING OFFICER TURNER: Yeah, the three page attachment
16 is the e-mail string at issue and that's in my --

17 MR. VITALE: What's the reference of page 1 of 4?

18 MR. ESTOCK: Oh, this is page 1.

19 HEARING OFFICER TURNER: The log.

20 MR. ESTOCK: The Exhibit is page 1, and the three pages
21 are the string.

22 HEARING OFFICER TURNER: Yeah. The log is page 1.

23 MR. VITALE: Thanks.

24 HEARING OFFICER TURNER: All right, okay. Is the Union
25 satisfied with the production of documents in response to the

1 subpoena at this stage?

2 MR. VITALE: Yes.

3 HEARING OFFICER TURNER: All right. Does the Union have
4 any additional witnesses or evidence it wishes to present?

5 MR. VITALE: No.

6 HEARING OFFICER TURNER: Does the Employer have any
7 additional witnesses or evidence it wishes to present?

8 MR. ESTOCK: No.

9 HEARING OFFICER TURNER: Does the Petitioner have any
10 witnesses or evidence she wishes to present?

11 MS. LYDECKER: No.

12 HEARING OFFICER TURNER: All right. Therefore if the
13 parties are interested in filing briefs in this matter, which
14 presumably you are, at least some of you are, those briefs
15 should be received by the close of the day one week from today,
16 which is Monday, December 15, 2014. And if there's nothing
17 further I can close the hearing. Is there anything further?

18 MR. ESTOCK: Nothing further.

19 HEARING OFFICER TURNER: Nothing further the hearing is
20 closed.

21 (Whereupon, at 3:32 p.m., the hearing in the above-entitled
22 matter was closed.)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION THREE

NISTEL INC.,

Employer,

LISA LYDECKER, An Individual,

Petitioner,

and

NEW YORK STATE NURSES ASSOCIATION,

Union.

Case No.: 03-RD-130926

Date: December 8, 2014

Place: Albany, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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Wayne, New Jersey 07470
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EXHIBIT D



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Executive Offices
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Valhalla, New York 10595
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VIA EMAIL AND U.S. MAIL

December 22, 2014

David Scarpino
President and Chief Executive Officer
HealthAlliance of the Hudson Valley
Hudson Valley Business Center
741 Grant Avenue
Lake Katrine, NY 12449

RE: Proposed Affiliation of Westchester Medical Center and HealthAlliance
of the Hudson Valley

Dear David:

This non-binding letter ("**Letter of Intent**") sets forth the intent of Westchester County Health Care Corporation, a New York public benefit corporation, as operator of Westchester Medical Center ("**WMC**"), and HealthAlliance, Inc., d/b/a HealthAlliance of the Hudson Valley, a New York not-for-profit corporation ("**HAHV**"), regarding an affiliation whereby HAHV and certain of its affiliates will join WMC's health care system, on the terms described herein (the "**Proposed Affiliation**"). WMC and HAHV may be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

1. Charitable Objectives. WMC and HAHV share a mission of providing the highest quality health care services to the communities they serve in Westchester, Putnam, Rockland, Dutchess, Orange, Ulster and Delaware Counties in New York. The Parties believe that they are in the best position to continue and strengthen the high-quality health care services they each deliver, and to meet the clinical, financial and technological demands of delivering health care in their respective communities, by exploring initiatives that enhance the missions and clinical, operational, management and financial strengths of WMC and HAHV through the Proposed Affiliation. The Parties believe the Proposed Affiliation, among other things, will benefit the residents of their communities by enabling them to undertake joint efforts to create a comprehensive and integrated delivery system that will better serve the health care needs of the residents and, specifically, the residents of HAHV's service area, through maintaining and enhancing HAHV's delivery of state-of-the-art health care services in the communities it serves.

2. Negotiation of Affiliation. Upon execution of this Letter of Intent, the Parties will continue to engage in due diligence activities and negotiate in good faith the Definitive Agreements (as defined below), containing terms consistent with those set forth in this Letter of Intent, and such other provisions upon which the Parties may mutually agree, subject to such approvals, consents or waivers as may be required of the Parties by their respective governing

boards, the New York State Department of Health ("DOH"), other regulatory bodies and agencies, lenders, or by bond holders, lessors or any other regulatory authorities where necessary to implement the Proposed Affiliation.

3. Access to Information; Due Diligence. Upon execution of this Letter of Intent, each Party will continue to grant the other Party and its representatives (attorneys, auditors, agents, consultants and bankers), as reasonably necessary, access to, and the right to, inspect and evaluate, the business, operations, records, files, documents, instruments, agreements, financial condition and prospects (the "**Business**") of the other Party, as relevant to the Proposed Affiliation. Furthermore, each Party will disclose or make available to the other Party and its representatives such books, agreements, papers and records reasonably requested by the other Party and its representatives, relating to, the Business of the other Party. In this regard, the Parties' right of access and inspection will be exercised in such a manner as not to interfere with the operation of the business of the other Party. Each Party agrees to cooperate, and to cause its representatives and agents to cooperate, with the other Party in the investigation and review of its operations.

The primary goals of due diligence shall be to determine the efficacy of the Proposed Affiliation and may include, but not be limited to, the following:

- (a) To assist in the expeditious development and execution of the Definitive Agreements (as defined herein);
- (b) To assure that each Party has the authority and ability to fully perform its obligations under the terms of the Proposed Affiliation;
- (c) To identify any undisclosed liabilities or contractual impairments or defaults to which the Parties might be exposed by reason of performance of the terms of the Definitive Agreements;
- (d) To identify any limitations or problems of the legal organization, past operations, financial and otherwise, or other matters affecting the Parties that may adversely affect the Proposed Affiliation; and
- (e) To ascertain those matters on which certifications by the Parties, or third party approval or advice may be necessary or appropriate prerequisites to a closing of the Proposed Affiliation.

4. Definitive Agreements. As a framework for their negotiations, any Definitive Agreements reached by the Parties will be mutually acceptable and will include the following:

- (a) *Corporate Structure and Governance.*
 - (i) Subject to further due diligence, on the closing date of the Proposed Affiliation (the "**Closing Date**"), HAHV and its affiliates, including, but not limited to, HealthAlliance Hospital Broadway Campus, HealthAlliance Hospital Mary's Avenue Campus,

Margaretville Memorial Hospital and Woodland Pond at New Paltz (the "HAHV Affiliates" and collectively, the "HAHV System") will affiliate with WMC. It is anticipated that such affiliation will initially be implemented by WMC becoming the sole corporate member, and appointing at least a majority of the Board of Directors, of HAHV (the "HAHV Board"). However, certain actions to be determined by the Parties (the "Supermajority Actions") will require a supermajority vote of the HAHV Board so that the non-WMC appointed members of the HAHV Board (the "Non-WMC Appointed Directors") will have the ability to influence the vote on such matters. The Supermajority Actions will include altering the material terms of the Proposed Affiliation and certain fundamental corporate actions, such as merger, consolidation and dissolution. Effective as of the Closing Date, each Party will amend its Certificate of Incorporation and Bylaws, as necessary, to implement the Proposed Affiliation.

(ii) Effective as of the Closing Date, WMC and HAHV will establish an Advisory Board comprised of Non-WMC Appointed Directors. The Advisory Board will meet regularly with WMC senior management and members of its Board of Directors. The Advisory Board will keep WMC senior management and the WMC Board apprised of issues affecting health care in Ulster and Delaware Counties (the "HAHV Primary Service Area"), as well as community issues and concerns in the HAHV Primary Service Area. One or more Non-WMC Appointed Directors will be entitled to attend the WMC Board meetings as a standing invitee. Further, the chief financial officer of HAHV, or the CEO of HAHV, shall be entitled to attend the regular (non-executive) session meetings of the WMC Board's Finance Committee as a standing invitee. Such right as a Finance Committee invitee shall not extend beyond such designee's employment with HAHV; upon expiration or earlier termination of the employment with HAHV, such designee shall automatically cease to be a WMC Finance Committee invitee, and a designated replacement shall be named subject to the same process.

(iii) The Parties shall cooperate with one another and consult with relevant regulatory authorities to effect the Proposed Affiliation. To that end, the Parties will establish a workgroup of hospital executives and attorneys and other advisors (the "Affiliation Workgroup") to effect the Proposed Affiliation, including collectively meeting with DOH.

(iv) After the Closing Date, the Parties will work toward revising the corporate structure of the HAHV System. It is anticipated that WMC will become the sole corporate member and active parent of the HAHV Affiliates, subject to receipt of all necessary approvals, including, but not limited to, the Boards of Directors of the Parties and DOH. The Boards of Directors of the HAHV Affiliates would be appointed by WMC, but would initially be comprised of individuals nominated by HAHV. The HAHV Affiliate Boards of Directors would retain certain reserved powers to be agreed upon by the Parties. The Affiliation Workgroup will work to develop the details of the revised corporate structure.

(b) *Consolidation of Campuses for HAHV.*

(i) The Parties acknowledge: (A) HAHV's intent (which is vital to its continued viability) to consolidate its Mary's Avenue Campus and Broadway Campus at the Mary's Avenue Campus site at a bed size adequate to meet the healthcare needs of the community in HAHV's Primary Service Area (the "Consolidation"); (B) that the Consolidation

must occur as soon as possible following receipt of necessary regulatory and other approvals; and (C) that the Consolidation will require funding of approximately \$35 million.

(ii) WMC and HAHV will work collaboratively in developing a model for the Consolidation. In light of the foregoing, WMC agrees to: (A) work with HAHV in the development of the DSRIP application in a manner that positions HAHV to maximize the capital award through that grant; and (B) assist HAHV to secure the balance of the funds required for the Consolidation through its current banking arrangements, through WMC banking relationships, or through alternate means.

(c) *Provision of Services.* The Parties agree that HAHV will continue to provide services as currently configured as described in Exhibit A, while rationalizing certain other services to achieve cost and quality economies of scale.

(d) *Charitable Assets; FundRaising.* Following the Closing Date, to the extent any property was given, devised, or bequeathed to HAHV or the HAHV Affiliates for restricted charitable purposes, such property will be administered by HAHV for the benefit of HAHV and/or the HAHV Affiliates in accordance with those purposes. All funds raised for the specific benefit of the HAHV System, whether by virtue of capital campaigns, planned giving or unrestricted or restricted donations, will remain with and be utilized solely for the benefit of the HAHV System.

(e) *HAHV Leadership.* The current HAHV President and CEO, David Scarpino, shall be and shall continue in his position after the Closing Date in accordance with the terms of his contract in effect as of the Closing Date. Thereafter, the continuation and appointment of the HAHV President and CEO shall be subject to the initial and continuing approval of the HAHV Board. Subject to the approval of the HAHV Board, the President and CEO of HAHV will appoint and set employment terms for senior management, including the COO, CFO, CMO, CIO, CSO, and CNO. The Compensation Committee of the HAHV Board shall continue in its current role after the Closing Date in accordance with the terms of the HAHV Bylaws and consistent with past practices which include setting CEO compensation and reviewing other executive compensation in both cases in a manner following rebuttable presumption requirements.

(f) *Medical Staff and Clinical Integration.* Implementation of the Proposed Affiliation will not affect or change the medical staff status or clinical privileges held by members of the medical staff of the HAHV Affiliates as of the Closing Date. The consummation of the Proposed Affiliation will not result in a need for any reapplications of current members of the HAHV medical staff, except as otherwise required by HAHV Medical Staff Bylaws with respect to expiration of medical staff appointments and credentials. All appointments to the HAHV Affiliates' Medical Staff shall be determined by such HAHV Affiliates in accordance with their respective Medical Staff Bylaws, Policies and Procedures. Any post-Closing Date amendments to the HAHV Affiliates' Medical Staff Bylaws must be approved by the HAHV Board. The Parties will discuss, and set forth in the Definitive Agreements, how each Party's employed and affiliated physicians will clinically integrate into the other Party's system from and after the Closing Date, including, without limitation, access by the HAHV Affiliates to a

defined list of specialists and subspecialist identified as high need as outlined in Exhibit B, integration of, and support in development of, HAHV's Clinical Integration Organization and/or other models of physician support. Thereafter, the Parties will, at the time of any renewals, extensions or continuations of such physicians, discuss and mutually agree to such integration as to preferred structures and composition. The Parties agree to maintain the existing family practice residency program at HAHV.

(g) *Branding.* On the Closing Date, the corporate documents for HAHV will retain use of the "HealthAlliance" name; thereafter, naming and branding determinations will be done in a collaborative process. The Definitive Agreements will address some of these determinations, with others being determined collaboratively thereafter.

(h) *Other Financial, Programmatic and Clinical Commitments.*

(i) WMC will make certain administrative services available to HAHV and allocate the costs of such services to HAHV consistent with the system allocation process and other hospital affiliates, including revenue cycle, financial services, marketing, strategic planning, master facilities planning, information technology, population health management, purchasing, contracting, legal services, risk management and insurance advisory services, educational programs, compliance, and audit services. HAHV will remain solely responsible for its day-to-day administrative functions including, without limitation, its human resources function and day-to-day supervision of its employees as well as labor relations (collective bargaining) functions.

(ii) WMC and HAHV may jointly participate in clinical relationships within the HAHV Primary Service Area.

(iii) WMC and HAHV may jointly develop product line / clinical programs / incubator pilots in the HAHV Primary Service Area.

(iv) WMC will commit to enhance HAHV's Medical Staff development. Specifically, WMC will assist HAHV in recruiting and provide HAHV with access to needed community-based specialists to strengthen the clinical services at HAHV. This recruitment may be undertaken by WMC jointly with MidHudson Regional Hospital of WMC to serve both the Kingston and Poughkeepsie communities.

(v) To the extent permissible, WMC will provide access to any affordable care organization (ACO) or IPAs applicable to the HAHV Primary Service Area and assist HAHV with physician recruitment for such networks. WMC will also support HAHV efforts to develop Population Health models including, but not limited to, operational and business intelligence tools. WMC will work with HAHV using HAHV as its programmatic hub for the provision of health services in the HAHV Primary Service Area. All clinical and physician relationships, affiliations, and ventures in the HAHV Primary Service Area will be discussed with HAHV, and those that are to be operationalized on the system's behalf by HAHV will be approved by HAHV.

(vi) WMC and HAHV will jointly develop and implement plans and strategies for expansion and development of health services in the HAHV Primary Service Area, including joint clinical relationships, product line / clinical programs and clinical centers of excellence at HAHV Affiliates. The Parties will also share quality best practices.

(vii) Medical students, residents and fellows rotating through HAHV Affiliates and any attendant economic arrangement shall be subject to the mutual agreement of the Parties as well as applicable rules and regulations governing Undergraduate and Graduate Medical Education. The Parties contemplate that the resources of HAHV Affiliates will be examined with a view toward hosting training sites for any of WMC's educational programs.

(viii) It is the intent of the Parties, by virtue of governance, financial and clinical integration, to continue to improve quality, enhance access and accelerate the building of an integrated health care delivery system. In that regard, and to ensure that the goals and objectives of the Parties are aligned, the Parties intend to jointly develop and enhance clinical relationships, product/service lines, physician integration, and network contracting related thereto in the HAHV Primary Service Area.

5. Confidentiality. The parties previously entered into that certain Non-Disclosure Agreement Regarding Business Negotiations dated September 22, 2014, attached hereto as Exhibit C and incorporated herein by reference (the "**Confidentiality Agreement**"). The Confidentiality Agreement remains in full force and effect, and applies to this Letter of Intent.

6. Exclusive Negotiations. During the Term of this Letter of Intent, HAHV and its affiliates, and their representatives, will negotiate only with WMC and its representatives, and will not solicit, entertain, support or accept any inquiry, proposal or offer from any other party, regarding the sale, conveyance, transfer, lease, membership interest, merger or other similar transaction involving substantially all of the assets directly or indirectly owned or controlled by HAHV contemplated by this Letter of Intent to be subject to the Proposed Affiliation. During the Term of this Letter of Intent, WMC will not solicit, entertain, accept any proposal or offer from, make any proposal or offer to any medical group or health care facility in the HAHV Primary Service Area, or enter into any material acquisitions or affiliations in the HAHV Primary Service Area, in either case without the prior written consent of HAHV.

Each Party agrees, during the pendency of this Letter of Intent, that neither Party will directly or indirectly solicit for employment any clinical, managerial or executive level employee of the other Party or any employed or contracted physician of the other Party; provided, however, that the foregoing will not prevent either Party from employing or contracting with any such person following the Closing of the Proposed Affiliation or termination of this Letter of Intent, provided, however, that such person contacts the Party with whom employment or an contractual arrangement is sought on his or her own initiative or in response to a general advertisement or solicitation and without any direct solicitation by the applicable Party.

7. Term; Termination of Letter of Intent. The term of this Letter of Intent will commence on the date signed by HAHV and WMC (the "**Execution Date**"), and will continue until the Definitive Agreements are signed or the Letter of Intent is terminated in accordance with the

terms hereof (the "Term"). Either Party may terminate this Letter of Intent (i) at any time, upon 30 days' written notice to the other Party; or (ii) if the Definitive Agreements have not been entered into on or before [March 31, 2015].

8. Interim Conduct. During the Term of this Letter of Intent:

(a) Each Party will use commercially reasonable efforts to (i) preserve such Party's present business and organization, (ii) keep available the services of such Party's employees, and (iii) preserve the goodwill of its patients, potential patients, suppliers and other persons having business dealings with it, and to do so in a manner consistent with prior practice and not introduce any materially different method or conduct of management or operations.

9. Effect of Agreement. It is understood and agreed that this Letter of Intent is intended to be, and will be construed only as, a non-binding agreement as to the terms and conditions of the transactions contemplated herein. Notwithstanding the preceding or anything else to the contrary, Paragraphs 2, 5, 6, 9, 10, 13 and 14 hereof will be binding on the Parties immediately and will be binding upon the Parties regardless of whether the transactions contemplated herein are ultimately consummated.

Except as set forth in the above paragraph, any legal rights and obligations of a Party will result only upon: (i) successful completion of each Party's due diligence review; (ii) the execution of a definitive written affiliation agreement together with all agreements ancillary thereto, which agreements will contain, among other things, such covenants, conditions, representations and warranties, indemnifications and other provisions customarily found in such agreements (the "Definitive Agreements"); (iii) each Party's obtaining all required approvals of the Definitive Agreements by its governing body and other third parties required to consummate the transactions described therein; and (iv) the Parties' obtaining all required regulatory approvals of the transactions, including a certificate of need by the New York Department of Health, Hart Scott Rodino, and Attorney General of New York, as applicable. The definitive terms and conditions of the transactions will be as set forth in the Definitive Agreements, into which this Letter of Intent and all prior discussions will merge. Except as set forth herein, it is expressly understood that neither Party will be entitled to any recourse, in the form of damages, or otherwise, for expenses incurred or benefits conferred or lost before or after the date of this Letter of Intent in the event that there is a failure, for any reason, of the Parties to agree to the Definitive Agreements.

10. Publicity and Public Relations. Except as required by law, it is understood that all press releases or other public communications of any sort relating to this Letter of Intent, and the method of the release for publication thereof, will be subject to the prior approval of both Parties, which approval will not be unreasonably withheld by either Party. Any communications necessary to effectively present the Proposed Affiliation to external constituencies served by the Parties and governmental bodies and officials will be mutually approved by the Parties. The Parties will coordinate on timing and content of communications with internal constituencies.

11. Antitrust Protocols. In exploring the Proposed Affiliation, conducting due diligence and holding meetings, each Party will at all times abide by, and cause their representatives to abide

by, antitrust protocols designed to comply with applicable antitrust laws, in a form mutually agreed upon by the Parties (the "**Antitrust Protocols**").

12. Successors and Assigns; Waiver. To the extent expressed in Section 9 hereof, this Letter of Intent will be binding upon the Parties and their respective successors and assigns. This Letter of Intent is not assignable by either Party without the prior written consent of the other Party, nor will either Party delegate any of its rights, obligations or duties under this Letter of Intent to another entity. No failure or delay by either Party in exercising any right under this Letter of Intent will operate as a waiver of such right by that Party.

13. Expenses. The Parties will each pay for its respective costs and expenses incurred in connection with the negotiation, preparation, execution and consummation of this Letter of Intent, the Definitive Agreements and the transactions contemplated by the Definitive Agreements (except as otherwise set forth therein), including the fees, expenses and disbursements of their respective legal counsel, accountants, and financial advisors or any brokers or agents.

14. Governing Law. This Letter of Intent will be governed by the laws of the State of New York without regard to that State's conflicts of laws principles. Any action or proceeding arising directly or indirectly in connection with, out of, or related to this Letter of Intent may be commenced and maintained only in courts located in Westchester County, New York. The Parties, by their execution of this Letter of Intent, consent and submit to the jurisdiction of any State or Federal court located within Westchester County, New York. Each Party waives any right that it may otherwise have to transfer or change the venue of any action or proceeding brought against it by the other Party and arising directly or indirectly in connection with, out of, or related to this Letter of Intent.

15. Notice. Any notice, demand or communication required, permitted, or desired to be given hereunder will be deemed effectively given when personally delivered, when received by facsimile, email or overnight courier, or three (3) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

HAHV: David Scarpino
President and Chief Executive Officer
HealthAlliance of the Hudson Valley
Hudson Valley Business Center
741 Grant Avenue
Lake Katrine, NY 12449
Facsimile: (845) 943-6072
E-mail Address: David.Scarpino@hahv.org

With a copy to: Judith A. Eisen, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11021

HealthAlliance of the Hudson Valley

December 22, 2014

Page 9

Facsimile: (516) 466-5964

E-mail Address: jeisen@garfunkelwild.com

WMC:

Michael D. Israel

President and CEO

100 Woods Road

Valhalla, NY 10595

Facsimile: (914) 493-8027

E-mail Address: IsraelM@wcmc.com

With a copy to:

Julie Switzer, Esq.

Executive Vice President and General Counsel

100 Woods Road

Valhalla, NY 10595

Facsimile: (914) 493-2321

E-mail Address: SwitzerJ@wcmc.com

16. Entire Agreement; Amendment. This Letter of Intent constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and any prior and contemporaneous agreements or understandings, whether written or unwritten, are deemed to be superseded hereby. No modification, waiver or amendment of this Letter of Intent will be binding upon any of the Parties unless it is a writing signed by both Parties.

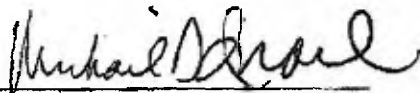
17. Counterparts; Facsimile Signatures. The Parties agree that this Letter of Intent may be executed in counterparts, each of which will be considered an original for all purposes. The Parties further agree that facsimile signatures may be considered an original for all purposes, including, but not limited to, execution of this Letter of Intent and enforcement of this Letter of Intent.

[Remainder of page intentionally left blank]

HealthAlliance of the Hudson Valley
December 22, 2014
Page 10

Please indicate your agreement in principle to the terms and conditions of this Letter of Intent and your good faith intention to enter into the negotiations contemplated hereby by executing it in the space provided below and returning one executed copy to our attention. We look forward to a successful and mutually rewarding relationship.

Sincerely,




Michael D. Israel
President and Chief Executive Officer

THE FOREGOING IS AGREED TO IN PRINCIPLE AS OF DECEMBER __, 2014.

HEALTHALLIANCE, INC.

By:



David Scarpino
President and Chief Executive Officer

Exhibit A
Reserved Services

Med Surg

Mental Health

Detox

Substance Abuse Rehab

Obstetrics

Exhibit B

List of Specialists and Subspecialists

2014- 2019 Kingston Physician Need Assessment		
Primary/Medical Specialties	Immediate FTE Need	5 Year FTE Potential
Cardiology	0	2
Cardiology - Interventional	2	0
Hem / Onc	2	0
OB	1	0
Physical Med/Pain Management	1	2
Primary Care	0	5
Psychiatry	0	5
Pulmonary	2	0
Medical Sub-Total	14	14
Surgical Specialties	Immediate FTE Need	5 Year FTE Potential
General Surgery	2	2
Neurosurgery/Spine	2	0
Gynecology	2	0
Ophthalmology	0	2
Orthopedic Surgery	0	2
Otolaryngology (ENT)	2	0
Plastic Surgery	2	0
Thoracic Surgery	0	1
Urology	2	0
Vascular Surgery	0	0
Surgical Sub-Total	14	7
Grand Total	20	21

Exhibit C
Confidentiality Agreement
See attached.

EXHIBIT E

[illegible]

In the Matter of)
)
)
 Nistel, Inc.,)
) Employer) Case No.
) 03-RD-130926
) and)
)
)
 New York State Nurses Association,)
) Union)
)
) and)
)
)
 Lisa Lydecker,)
) Petitioner)
)

AFFIDAVIT OF JORDY RABINOWITZ

1. I am Vice President, Human Resources of Westchester Medical Center (“WMC”) and have served in that position since October, 2014. I submit this affidavit in response to the subpoena issued by the National Labor Relations Board on February 9, 2015 at the request of the New York State Nurses Association in connection with the February 20, 2015 hearing in Nistel, Inc., Case No. 03-RD-130926.

2. On January 5, 2015, WMC publicly announced that it had signed a Letter of Intent ("LOI") regarding an affiliation that would result in WMC becoming the sole corporate member of HealthAlliance of the Hudson Valley ("HAHV"). The parties will engage in diligence prior to negotiating and signing any definitive agreement. Any agreement arising out of the proposed affiliation will be subject to conditions and regulatory approvals.

3. In connection with the subpoena, I have been informed by counsel for NYSNA that Nistel, Inc. is a company that provides surgical services to Kingston Hospital (now also known as the Broadway Campus), and Benedictine Hospital (now also known as the Mary's Avenue Campus), both of which are operated by HAHV.

4. WMC was unaware of any relationship between HAHV and Nistel, Inc. prior to the receipt of the February 9, 2015 subpoena.

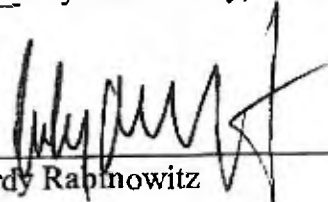
5. Although, as its corporate member, WMC would manage HAHV after a closing (if any) of the transaction, Section 4(h)(i) of the LOI anticipates that HAHV would continue its human-resources function and its day to day supervision of employees as well as labor relations (collective bargaining) functions."

6. Unless and until a definitive agreement is reached and the transaction closes, WMC will have no control of or role in HAHV management.

Following a closing, if any, of the affiliation proposal, WMC will look for ways to achieve synergies, efficiencies, and cost-savings.

7. At this stage, WMC has no view as to whether Nistel, Inc. would be affected post-affiliation.

Signed and sworn to this 18th day of February, 2015.


Jordy Rabinowitz

*Sworn to before me
this 18th day of
February, 2015*

Barbara F. Kukowski

BARBARA FLYNN KUKOWSKI
Notary Public, State of New York
No. 02KU605548
Qualified in Westchester County
Commission Expires February 26, 2016 ¹⁹

EXHIBIT F

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NISTEL, INC.,

Case No. 03-RD-130926

Respondent,

And

LISA LYDECKER,

Petitioner,

And

NEW YORK STATE NURSES
ASSOCIATION,

Union.

The above-entitled matter came on for hearing pursuant to Notice, before DAVID TURNER, Hearing Officer, at the Leo W. O'Brien Federal Building, 11A Clinton Avenue, Albany, New York, on Friday, February 20, 2015, at 10:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

1 On behalf of the Employer:

2

3 HOWARD G. ESTOCK, ESQ.
4 Clifton Budd & DeMaria, LLP
5 The Empire State Building
6 350 Fifth Ave., 61st Fl.
7 New York, NY 10118
8 212-687-7410
9

10 On Behalf of the Petitioner:

11

12 LISA LYDECKER, Pro Se
13 29 Elisa Villa Dr.
14 Saugerties, NY 12577
15

16 On Behalf of the Union:

17

18 JOSEPH J. VITALE, ESQ.
19 Cohen, Weiss & Simon, LLP
20 330 West 42nd St.
21 New York, NY 10036-6979
22 212-356-0238
23 jvitale@cwsny.com
24
25

1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>				
2						
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
4	Joseph Marsicovete	27	50	61	64	--
5	Lisa Lydecker	67	--	--	--	--
6						

BURKE COURT REPORTING, LLC
 1044 Route 23 North, Suite 206
 Wayne, New Jersey 07470
 (973) 692-0660

1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
2	Board's		
3	B-4(a) through (o)	7	7
4			
5			
6	Employer's		
7	E-3	9	21
8	E-4 through 6	11	21
9	Union's		
10	U-16	18	21
11	U-17	20	21
12			

P R O C E E D I N G S

(Time Noted: 10:40 a.m.)

HEARING OFFICER TURNER: On the record.

Alright. This is a formal hearing in the matter of Nistel, Inc., case number 3-RD-130926 before The National Labor Relations Board. The Hearing Officer appearing for The National Labor Relations Board is David M. Turner.

All parties have been informed of the procedures at formal hearing before the Board by service of a statement of standard procedures with the notice of hearing. I have additional copies of the statement for distribution if any party wants more. Will the parties please state their appearances for the record? For the Petitioner?

MS. LYDECKER: Lisa Lydecker.

HEARING OFFICER TURNER: Okay. And for the Employer?

MR. ESTOCK: For the Employer Howard Estock, Clifton, Budd & DeMaria.

HEARING OFFICER TURNER: Okay. And for the Union, please?

MR. VITALE: Joseph Vitale from the law firm of Cohen, Weiss & Simon, LLP for The New York State Nurses Association.

HEARING OFFICER TURNER: Okay. And are there any other appearances?

MR. ESTOCK: Oh, in the room is a potential witness, Cheryl --

MR. VITALE: Hanson-Rodriguez (ph).

1 MR. ESTOCK: Thank you. Hanson-Rodriguez. I think they
2 already -- apologize, Sherry. It's Sherry, not Cheryl. Self-
3 correcting device here. I've offered to counsel for NYSNA that
4 I would bring a witness from Nistel in case there are any
5 questions that arise that may come from the desire to question
6 --

7 HEARING OFFICER TURNER: Alright. So she's a Nistel --

8 MR. ESTOCK: She's a --

9 HEARING OFFICER TURNER: -- principal agent?

10 MR. ESTOCK: What is your title?

11 MS. HANSON: VP of operations.

12 MR. ESTOCK: VP of operations.

13 HEARING OFFICER TURNER: VP of operations. But Mr. Estock
14 you still represent Nistel and Health Alliance both, correct?

15 MR. ESTOCK: I do.

16 HEARING OFFICER TURNER: Okay.

17 MR. ESTOCK: I still represent both.

18 HEARING OFFICER TURNER: Alright. So beyond that are
19 there any other appearances? Let the record show no response.
20 Are there any other persons, parties or labor organizations in
21 the hearing room who claim an interest in this proceeding?
22 It's a little late if they were here, but hearing no response
23 let the record show no response.

24 I now propose to receive the formal papers which have been
25 marked as Board's exhibit 4. And this exhibit has already been

1 shown to the parties. Are there any objections to my receipt
2 of Board's exhibit 4, the formal papers? Hearing no objection
3 Board's 4 is received.

4 Alright. So this is part three in a process that began
5 during the summer. And as the formal papers, Board's exhibit
6 4, make clear, the hearing in this matter was remanded by the
7 Regional Director by her order dated February 6th 2015, which
8 is Board's exhibit 4 and I'll quote from it. "For the limited
9 purpose of taking additional testimony and evidence on the
10 issue of whether the Employer now has imminent and certain
11 plans to cease its operations, as a result of the announcement
12 after the remand hearing closed and the supplemental decision
13 issues. That Health Alliance, the Employer's sole customer,
14 and Westchester Medical Center are engaged in merger
15 discussions."

16 Alright. So with that being the limited purpose of the
17 hearing, Mr. Estock, did you want to start -- we didn't
18 actually discuss it, but Mr. Estock did you want to call a
19 witness to start going through the documents or did you want to
20 discuss --

21 (Board's B-4 identified & received in evidence)

22 MR. ESTOCK: Well, what I --

23 HEARING OFFICER TURNER: -- documents on the record ahead

24 --

25 MR. ESTOCK: I think we can discuss the documents on the

1 record.

2 HEARING OFFICER TURNER: Okay.

3 MR. ESTOCK: If we need a witness --

4 HEARING OFFICER TURNER: Okay.

5 MR. ESTOCK: -- I've got them here. I'm assuming that --

6 I'll presume that that isn't necessary for the moment --

7 HEARING OFFICER TURNER: Okay.

8 MR. ESTOCK: -- and then I'd like to describe what
9 documents I have brought, get them marked for -- number-wise
10 and then if no one has any objection we can admit them into
11 evidence.

12 HEARING OFFICER TURNER: Okay.

13 MR. ESTOCK: So if that's okay I will --

14 HEARING OFFICER TURNER: Okay.

15 MR. ESTOCK: -- proceed to do that.

16 HEARING OFFICER TURNER: Alright. That's fine. And
17 actually why don't we go off the record for a moment before you
18 do that?

19 MR. ESTOCK: Yep.

20 (Whereupon, a brief recess was taken)

21 HEARING OFFICER TURNER: On the record.

22 Alright. And after some off the record discussion, Mr.
23 Estock has some documents prepared in response to a subpoena is
24 my understanding. And go ahead, Mr. Estock.

25 MR. VITALE: Well, in lieu of a subpoena.

1 MR. ESTOCK: In lieu --

2 HEARING OFFICER TURNER: In lieu of a subpoena. Oh, the
3 supervisor was never served?

4 MR. ESTOCK: That's right, yeah.

5 HEARING OFFICER TURNER: Oh, I'm sorry. I apologize --

6 MR. ESTOCK: There was a subpoena for Westchester Medical
7 Center and there's an affidavit --

8 HEARING OFFICER TURNER: Okay.

9 MR. ESTOCK: -- that relates to --

10 HEARING OFFICER TURNER: Alright.

11 MR. ESTOCK: -- that. I'll leave that --

12 HEARING OFFICER TURNER: So I'll --

13 MR. ESTOCK: -- up to counsel for --

14 HEARING OFFICER TURNER: -- strike my statement.

15 MR. ESTOCK: -- the Union. So pursuant to that agreement,
16 in lieu of a subpoena, I have produced, well, four documents.
17 The first is a letter of intent dated December 22, 2014 between
18 Westchester Medical Center and Health Alliance of the Hudson
19 Valley. That's made up of a 10 page letter and three exhibits,
20 that is exhibit A, B and C to that document. And I'll ask that
21 this be marked for identification as Employer's exhibit -- what
22 are we up to?

23 (Employer's E-3 identified)

24 HEARING OFFICER TURNER: 3.

25 MR. ESTOCK: 3. And you won't have the -- give you an

1 extra copy for whatever use --

2 MR. VITALE: Oh, thank you.

3 HEARING OFFICER TURNER: You have a copy for me, Howard?

4 MR. ESTOCK: Yeah.

5 HEARING OFFICER TURNER: Thank you. And the Petitioner
6 too?

7 MR. ESTOCK: Yeah.

8 HEARING OFFICER TURNER: Okay, thanks. Alright.

9 MR. ESTOCK: We're going to share that one, but take a
10 look at it and we'll share at this table.

11 HEARING OFFICER TURNER: Give me one second. Let's go off
12 the record quickly --

13 MR. ESTOCK: Yep.

14 HEARING OFFICER TURNER: -- here while you're doing that.

15 (Whereupon, a brief recess was taken)

16 HEARING OFFICER TURNER: On the record.

17 MR. ESTOCK: The second document I have pursuant to that
18 agreement is a December 9th 2014 -- and let me just go off the
19 record for one second.

20 HEARING OFFICER TURNER: Okay. Let's go back off.

21 (Whereupon, a brief recess was taken)

22 HEARING OFFICER TURNER: On the record.

23 Okay. Alright. So we have already marked Employer's
24 exhibit 3, which is the letter of intent. And Mr. Estock,
25 we're describing what will be marked as Employer's 4, which is?

1 MR. ESTOCK: Which is the minutes of the Health Alliance
2 board meeting of December 19th 2014. A seven page document,
3 which I will ask be marked as Employer's exhibit 4. 19.

4 (Employer's E-4 identified)

5 MR. VITALE: Okay.

6 MR. ESTOCK: And I only have three of these.

7 HEARING OFFICER TURNER: Okay. Let's go off the record
8 and I can make a copy.

9 (Whereupon, a brief recess was taken)

10 HEARING OFFICER TURNER: On the record.

11 Okay. And we have -- oh, sorry.

12 MR. ESTOCK: Yep. The next document -- let's do it this
13 way. The next document is again a set of minutes for the
14 Health Alliance dated January 30th 2015. And this is an eight
15 page document, which I'd ask be marked as exhibit -- Employer's
16 exhibit 5. A copy for counsel and a copy for you.

17 (Employer's E-5 identified)

18 HEARING OFFICER TURNER: Thank you.

19 MR. ESTOCK: And we've got ours marked there. That then
20 brings us down to the last document, which is a set of minutes
21 for the Mary's Avenue campus, aka Benedictine Hospital board of
22 directors on Wednesday January 7th 2015. A five page document
23 that I ask be marked as Employer's exhibit -- what --

24 (Employer's E-6 identified)

25 HEARING OFFICER TURNER: 6.

1 MR. ESTOCK: 6. And that -- those are the exhibits that
2 were relevant to the request of the Union.

3 HEARING OFFICER TURNER: Okay. Go ahead.

4 MR. VITALE: Just to follow up on off the record
5 conversations --

6 HEARING OFFICER TURNER: We're on the record now.

7 MR. VITALE: No. Right --

8 HEARING OFFICER TURNER: Oh, okay, okay --

9 MR. VITALE: -- no, that's what I'm saying. On the
10 record, I would -- with respect to -- clearly with respect to
11 Employer exhibit 3, the -- NYSNA has no objection to the
12 introduction of the exhibits. With respect to 4, 5 and 6 I
13 would like the opportunity to review them.

14 But I also wanted to indicate I thought that we were going
15 to have some kind of agreement that there was only certain
16 parts of the exhibits 4, 5 and 6 that were really going to be
17 introduced into evidence. And then other parts of the minutes
18 talking about other business was really not supposed to be part
19 of this record.

20 MR. ESTOCK: Correct.

21 MR. VITALE: And you had offered to sort of go through
22 each document, indicate which parts you thought were inbounds
23 and --

24 MR. ESTOCK: Yes.

25 MR. VITALE: -- which parts were out of bounds.

1 MR. ESTOCK: I do have redacted copies. Not with me, but
2 I have them in my office. I can send them out this afternoon
3 and ask that they be replaced on -- both on the record and for
4 counsel's use.

5 HEARING OFFICER TURNER: Okay. Well, why don't we --

6 MR. ESTOCK: Could you --

7 HEARING OFFICER TURNER: I won't make a ruling on that,
8 only because since it's unclear what's in these documents.
9 Since I've never seen them before, and at least three quarters
10 of them I think the Union has not seen before and the
11 Petitioner may not have seen many of these before either, it's
12 unclear whether or not any of these will be put in the record
13 in any event.

14 MR. ESTOCK: Okay. We can wait on that.

15 HEARING OFFICER TURNER: So why don't we wait on that.
16 Would now be an appropriate time to go off the record to allow
17 a review of these documents so we can figure out --

18 MR. VITALE: Yeah, yes.

19 HEARING OFFICER TURNER: -- in which direction we're
20 headed? So let's go off the record for that purpose then and
21 we can all --

22 MR. ESTOCK: Alright.

23 HEARING OFFICER TURNER: -- read.

24 (Whereupon, a brief recess was taken)

25 HEARING OFFICER TURNER: On the record.

1 Reviewed the documents marked exhibits -- Employer's
2 exhibits 3 through 6. And Mr. Vitale, I think you wanted to
3 state something on the record?

4 MR. VITALE: Right. Well, previously stated with respect
5 to exhibit 3, I had -- NYSNA has no objection to its
6 introduction. With respect to exhibit 4, there was discussion
7 about the Board having a -- the Board's version of the exhibits
8 being a full version, but that the parties -- the Employer
9 would provide all the other parties a redacted version of
10 exhibits 4, 5 and 6. And in off the record conversations
11 counsel for the Employer and counsel for the Union have talked
12 about what would be -- remain in the redacted portions.

13 So I just want to quickly have the record reflect with
14 respect to exhibit 4, the Employer had previously indicated
15 that all of what's in Roman numeral three under the heading
16 education program would be included and not redacted. In off
17 the record conversations they've -- the Employer has agreed
18 that the redacted version will also continue to preserve, on
19 page three at the bottom, the bullet consolidation and the
20 three bullets there under.

21 HEARING OFFICER TURNER: Where are you on, Mr. Vitale? I
22 apologize for interrupting. If we're going through all of this
23 I'm assuming someone is interested in certainly offering these
24 into the record through a witness?

25 MR. VITALE: Oh, I'm sorry.

1 HEARING OFFICER TURNER: I mean if the answer is yes,
2 let's go on.

3 MR. VITALE: When I'm -- I'm sorry. When I'm -- I'm
4 sorry, I'm sorry.

5 MR. ESTOCK: We're probably going to jointly agree they
6 can go in.

7 HEARING OFFICER TURNER: Okay.

8 MR. VITALE: I apologize.

9 HEARING OFFICER TURNER: But if they're not going in the
10 record, I don't want to spend the time on the record discussing
11 --

12 MR. ESTOCK: Yeah --

13 MR. VITALE: I'm sorry, they're --

14 HEARING OFFICER TURNER: -- what everyone is getting.

15 MR. VITALE: I'm sorry. I'm not going to object to the
16 introduction of the exhibits. I just -- I've had an
17 opportunity to review --

18 HEARING OFFICER TURNER: Okay.

19 MR. VITALE: -- it. I'm not going to --

20 HEARING OFFICER TURNER: Alright.

21 MR. VITALE: -- object to the introduction of the
22 exhibits. I just want to have the record clarify that in terms
23 of what the redacted versions will have --

24 HEARING OFFICER TURNER: Okay.

25 MR. VITALE: -- what I expect to still be able to see once

1 I get the redacted versions --

2 HEARING OFFICER TURNER: Understood.

3 MR. VITALE: -- and have to destroy or return the
4 unredacted versions.

5 HEARING OFFICER TURNER: Right. No, I understand that.

6 MR. VITALE: Okay.

7 HEARING OFFICER TURNER: I appreciate that.

8 MR. VITALE: Yes, and --

9 HEARING OFFICER TURNER: I understand that. I just wanted
10 to make sure that someone is actually putting on -- putting in
11 --

12 MR. VITALE: Yes.

13 MR. ESTOCK: I think all of these documents --

14 HEARING OFFICER TURNER: -- 3 through 6.

15 MR. ESTOCK: -- will --

16 HEARING OFFICER TURNER: Okay. Go ahead.

17 MR. VITALE: Yes --

18 HEARING OFFICER TURNER: Alright. That's okay.

19 MR. VITALE: So the -- I wanted -- yes, I'm not objecting
20 to the introductions of exhibits 4, 5 or 6.

21 HEARING OFFICER TURNER: Okay.

22 MR. VITALE: I'm sorry. With respect to exhibit 4, again
23 we had talked about having all of Roman three being included in
24 the unredacted (*sic*) version. And through off the record
25 discussions the unredacted (*sic*) versions will also include, at

1 the bottom of page three, under president's report, the bullet
2 for consolidation and the three bullets that are on the bottom
3 of page three. And on page four the fourth bullet down, union,
4 and the three bullets there under will remain in the unredacted
5 (sic) version.

6 With respect to exhibit 5, which is the January 30th
7 minutes of the Health Alliance board meeting, the Employer had
8 previously indicated that it would include on page three, the
9 second bullet union and the three bullets there under. Upon
10 off the record conversations the Employer has agreed that the
11 unredacted -- I'm sorry, the redacted version will also include
12 the fourth bullet on page three, which is consolidation and the
13 two bullets there under, as well as on the -- towards the
14 bottom of page three there is a bullet regarding DSRIP, D-S-R-
15 I-P, and the three bullets there under will be included in the
16 redacted version.

17 And finally with respect to exhibit 6 -- Employer exhibit
18 6, which is the January 7th minutes, the Employer had indicated
19 that on page two it was going to include in the redacted
20 versions the first two bullets for affiliate partner and DSRIP
21 update. I have no further portions of that document that I
22 would like to be kept in the redacted version. So with those
23 clarifications NYSNA has no objection to the introductions of
24 exhibit 3 through 6.

25 HEARING OFFICER TURNER: Okay.

1 MR. ESTOCK: And the Employer agrees to what Mr. Vitale
2 had just recited.

3 HEARING OFFICER TURNER: Okay. Alright. Very well. Mr.
4 Estock, do you have a witness you'd like to call?

5 MR. ESTOCK: Actually, I don't. I'm going to let Mr.
6 Vitale have his --

7 HEARING OFFICER TURNER: Okay. Mr. Vitale?

8 MR. VITALE: Before I do that, I would like to offer into
9 evidence and hand up what is going to be -- and just for
10 simplicity sake I'll make it Union's 16 and Union's 17. We'll
11 make Union 16 be the subpoena dated February 9th that was
12 directed to Michael Israel of Westchester Medical Center.
13 Westchester Medical Center being the other party to the letter
14 of intent that has been now entered into evidence as Employer's
15 exhibit 3.

16 (Union's U-16 identified)

17 HEARING OFFICER TURNER: It's not in evidence yet.

18 MR. VITALE: Oh, I'm sorry. I thought --

19 HEARING OFFICER TURNER: It's not in --

20 MR. VITALE: -- he moved and -- oh, I'm sorry --

21 HEARING OFFICER TURNER: It's not in evidence yet.

22 MR. VITALE: -- you didn't make a ruling.

23 HEARING OFFICER TURNER: No, no. Yeah. Yeah, someone,
24 through a witness, I assume will get it in.

25 MR. VITALE: Ah.

1 HEARING OFFICER TURNER: Yeah, I'd like to have some --
2 MR. ESTOCK: We can --
3 HEARING OFFICER TURNER: -- witness identify it.
4 MR. VITALE: Well, why don't we --
5 MR. ESTOCK: We can --
6 HEARING OFFICER TURNER: Unless the parties can stipulate
7 --
8 MR. VITALE: I'm sorry --
9 HEARING OFFICER TURNER: -- to it, but let's --
10 MR. VITALE: Let me finish with my --
11 HEARING OFFICER TURNER: Okay.
12 MR. VITALE: -- exhibits and then I anticipate there'll be
13 a unanimous motion to have all the documents admitted without -
14 -
15 HEARING OFFICER TURNER: Even better.
16 MR. VITALE: -- witness.
17 HEARING OFFICER TURNER: Okay.
18 MR. VITALE: And then -- I'm sorry. With respect to Union
19 -- I'm sorry. Union exhibit 17 will be the affidavit of Jordy
20 Rabinowitz dated February 18th, which I will represent is --
21 was produced in response to the subpoena and in connection with
22 -- shortly after the issuance of the subpoena Westchester
23 Medical Center began conversations with myself, as counsel for
24 NYSNA, that led to an agreement by all parties, Employer and
25 Petitioner, that rather than coming today to testimony, Jordy

1 Rabinowitz would be able to submit this affidavit and his
2 testimony would be through the affidavit today. So with that,
3 I would move for the introduction of Union exhibit 16 and 17.
4 And for the heck of it I will also move for the exhibit -- for
5 the introduction of exhibits 3 -- Employer's 3 through 6.

6 (Union U-17 identified)

7 HEARING OFFICER TURNER: Any objection to my receipt of
8 Union 16, Union 17 as well as Employer's 3 through 6?

9 MR. ESTOCK: I only have one comment.

10 HEARING OFFICER TURNER: Well, before -- Ms. Lydecker, you
11 said no objection?

12 MS. LYDECKER: Uh-huh.

13 HEARING OFFICER TURNER: Okay. Mr. Estock, go ahead.

14 MR. ESTOCK: And I have one comment on Union 17. I do not
15 object to this being submitted into evidence. I do reserve the
16 right to argue on what the paragraphs may mean to this case as
17 a matter of right. So with that one note, I have no objection
18 whatsoever.

19 MR. VITALE: Hence the reason for a post hearing brief, to
20 argue what the evidence actually means --

21 MR. ESTOCK: I'm -- no, I'm --

22 HEARING OFFICER TURNER: Or a closing argument --

23 MR. VITALE: Or a closing argument.

24 MR. ESTOCK: -- ready to stand up and go now, but --

25 MR. VITALE: Alright.

1 HEARING OFFICER TURNER: Alright. So --

2 MR. ESTOCK: -- we'll talk about that --

3 HEARING OFFICER TURNER: Okay. Without object all of the
4 documents are received; Union's 16 and 17 and Employer's 3
5 through 6.

6 (Union's U-16 & 17 received in evidence)

7 (Employer's E-3 through 6 received in evidence)

8 MR. VITALE: And I'm willing to stipulate that the -- now,
9 as before, the parties have looked at the same facts and drawn
10 different conclusions about what those facts mean.

11 MR. ESTOCK: Which is what makes a horse race.

12 MR. VITALE: Which is what makes a horse race, correct.

13 HEARING OFFICER TURNER: So does this mean we're done
14 then?

15 MR. VITALE: No, no, no.

16 HEARING OFFICER TURNER: Okay.

17 MR. VITALE: It means I'm trying to figure out what if
18 anything I mean -- I need Mr. Marsicovete -- is that right?
19 Mr. Marsicovete to testify that's not already in the record,
20 either through the documents, the prior exhibits, the prior
21 testimony or today's exhibits. Can we go off --

22 HEARING OFFICER TURNER: Please.

23 MR. VITALE: -- the record just for a second?

24 HEARING OFFICER TURNER: Let's go off the record.

25 (Whereupon, a brief recess was taken)

1 HEARING OFFICER TURNER: On the record.

2 We had some off the record discussion and now we're going
3 to do it on the record.

4 MR. VITALE: Yes, thank you --

5 HEARING OFFICER TURNER: You're welcome.

6 MR. VITALE: -- Mr. Hearing Officer. In off the record
7 conversations I've discussed that NYSNA would seek to call Mr.
8 Marsicovete to retake the stand and to offer some testimony as
9 to whether or not, in light of the letter of intent, and the
10 contents of the letter of intent and the anticipated definitive
11 agreement mentioned in the letter of intent, and in light of
12 the statements by Jordy Rabinowitz from Westchester Medical
13 Center, as reflected in Union exhibit 17 --

14 HEARING OFFICER TURNER: I'm sorry to cut you off. What's
15 the anticipated definitive agreement? I did not see --

16 MR. VITALE: I'm sorry, the --

17 HEARING OFFICER TURNER: -- that phrase in the letter of
18 intent.

19 MR. ESTOCK: It's under -- if I may?

20 MR. VITALE: Yeah.

21 MR. ESTOCK: It's under paragraph four --

22 HEARING OFFICER TURNER: Oh, four. I see. I'm sorry.

23 MR. ESTOCK: -- on page two. It's what the parties are
24 striving to --

25 HEARING OFFICER TURNER: Striving for.

1 MR. ESTOCK: -- achieve.

2 HEARING OFFICER TURNER: Okay. Alright. I understand.
3 Go ahead. I understand. I'm sorry.

4 MR. ESTOCK: Excuse me.

5 MR. VITALE: I had such a big wind up. But in light of
6 those various factors, the letter of intent, the contents of
7 the letter of intent, the contents of Mr. Rabinowitz's
8 affidavit, whether in light of those new developments the
9 Health Alliance was willing to -- Health Alliance/Nistel was
10 willing to view differently the offer that NYSNA had previously
11 made and recently renewed. Specifically that when Nistel
12 closes, contrary to the original intent of the parties when
13 Nistel announced its closure back in early of 2014, contrary to
14 the initial intent to have all Nistel nurses go directly on the
15 payroll of the Benedictine Hospital, the Mary's Avenue campus,
16 the Union was renewing its offer to let the Nistel bargaining
17 unit, upon Nistel's closure, pick whether they wanted to go to
18 the Kingston campus or the Benedictine campus.

19 And in light of that renewed offer, and in light of the
20 letter of intent and in light of the previously articulated
21 reasons for why Health Alliance came to the conclusion that
22 despite the savings that could be accomplished through
23 terminating its relationship with Nistel, there were employee
24 considerations. In light of all that and in light of the
25 potential that Health Alliance is now going to have to convince

1 Westchester Medical Center of the wisdom of spending those
2 resources and maintaining the Nistel relationship, whether that
3 has led Health Alliance/Nistel to reconsider whether to close
4 Nistel. That was my intent to question him. And in off the
5 record discussions there was an objection raised by the
6 Employer whether that would be an appropriate line of
7 questioning.

8 HEARING OFFICER TURNER: Mr. Estock?

9 MR. ESTOCK: I don't have any problem with counsel
10 questioning Mr. Marsicovete on the impact of the LOI, because
11 that's obviously a new development since the last hearing, or
12 of Mr. Rabinowitz's affidavit, because obviously that's
13 something that has come to be since that. But I -- what he
14 would really be -- well, there's two possibilities. He could
15 ask a hypothetical what if and I would object to that.

16 But if he's saying that, under the circumstances I simply
17 don't want to go back into the issues of why we may have
18 rejected the offer in the first place or the second time it was
19 made, because that is something that's not new. Wasn't
20 relevant to anything that is now new, because that wasn't even
21 in existence then. But if he wants to ask Mr. Marsicovete
22 whether it has changed his opinion on that offer, without going
23 into the details other than what's necessary, I don't have any
24 objection to that.

25 I do have an objection to going beyond the Regional

1 Director's order on what the scope of this hearing should be.

2 So I suggest that maybe one way to do it is to put Mr.

3 Marsicovete on the stand --

4 MR. VITALE: Okay. And we'll do --

5 HEARING OFFICER TURNER: Okay.

6 MR. ESTOCK: -- and I'll reserve objections --

7 HEARING OFFICER TURNER: That seems like a more efficient
8 use of time. Ms. Lydecker, did you have anything you wanted to
9 add?

10 MS. LYDECKER: No.

11 HEARING OFFICER TURNER: Okay. Hearing that it seems to
12 me, subject of course to the particular questions that will be
13 asked, it seems appropriate to me that in the event that you
14 call Mr. Marsicovete to testify about Nistel's closure plans,
15 in light of issues associated with these new developments, aka
16 the Westchester Medical Center letter of intent, that's
17 entirely appropriate. I'll reserve judgment on the
18 equalization agreement and related things until the particular
19 questions are put forward. In my view --

20 MR. VITALE: I --

21 HEARING OFFICER TURNER: -- it might be useful to have a
22 little bit more --

23 MR. VITALE: I hear you.

24 HEARING OFFICER TURNER: -- foundation, prior to those
25 particular questions here, because the purpose of the hearing

1 is to figure out whether or not these ballots should be
2 counted. In other words is the place going to close eminently,
3 based on these new developments versus --

4 MR. VITALE: But --

5 HEARING OFFICER TURNER: -- what happened back in July?

6 MR. VITALE: I hear you.

7 HEARING OFFICER TURNER: In my view, anyway. Go ahead.

8 MR. VITALE: So I --

9 HEARING OFFICER TURNER: Okay.

10 MR. VITALE: NYSNA does call Joseph --

11 HEARING OFFICER TURNER: Okay.

12 MR. VITALE: -- Marsicovete.

13 HEARING OFFICER TURNER: Okay. Please raise your right
14 hand, sir.

15 Whereupon,

16 JOSEPH MARSICOVETE

17 Having been first duly sworn, was called as a witness and
18 testified herein as follows:

19 HEARING OFFICER TURNER: Okay. Please have a seat. And
20 once you have made yourself comfortable please state and spell
21 your name for the record. And I have the exhibits in front of
22 you there --

23 THE WITNESS: Sure.

24 HEARING OFFICER TURNER: -- in the event you need them.

25 THE WITNESS: Name is Joseph, middle initial C,

1 Marsicovete, M-A-R-S-I-C-O-V-E-T-E.

2 HEARING OFFICER TURNER: Okay. Mr. Vitale, please go.

3 MR. VITALE: Could we hand Mr. Marsicovete exhibit --
4 Employer exhibit 3?

5 HEARING OFFICER TURNER: He has it.

6 MR. VITALE: Ah.

7 HEARING OFFICER TURNER: He has everything.

8 MR. VITALE: You have all the exhibits?

9 HEARING OFFICER TURNER: He has everything, yeah.

10 THE WITNESS: I have all the exhibits.

11 MR. VITALE: Great, thank you.

12 HEARING OFFICER TURNER: I'm ready.

13 MR. VITALE: Alright.

14 DIRECT EXAMINATION

15 BY MR. VITALE:

16 Q So Mr. Marsicovete, with respect to Employer exhibit 3,
17 are you familiar with this document?

18 A Yes.

19 Q And with respect to Employer exhibit 3, it discusses that
20 this is a letter of intent, correct?

21 A Correct.

22 Q And it contemplates that the parties will conduct due
23 diligence and with any luck reach a definitive agreement by the
24 end of March, correct?

25 A Correct.

1 Q And it spells out, in the letter of intent, some of the
2 elements of what that definitive agreement could look like,
3 correct?

4 A What those elements would contain, right.

5 Q And --

6 HEARING OFFICER TURNER: Okay. The witness has
7 Employer's 3. Sorry for the interruption.

8 MR. VITALE: Thank you. And this letter of intent was
9 signed on or about December 22nd?

10 THE WITNESS: I remember it as being Christmas. So it's
11 got to be right around then, right.

12 BY MR. VITALE:

13 Q Okay. And I don't know if you've had an opportunity to
14 review or look at what's been marked as Union exhibit 17, the
15 affidavit of Jordy Rabinowitz.

16 A I have seen that, yes.

17 Q And I take it in -- with respect to -- is it fair to say
18 that between the signing of the letter of intent around
19 Christmastime and the possibility of a definitive agreement by
20 the end of March of this year, there are several steps --
21 several things that all the parties need to do?

22 A Multiple steps, yes.

23 Q Alright.

24 A Many steps.

25 Q I mean sometimes it's summed up with the -- sort of the

1 ambiguous term due diligence, which could mean lots of things,
2 right?

3 A Correct.

4 Q And if I understand correctly, with respect to both
5 parties conducting their due diligence, vary -- various
6 committees have been established?

7 A I'm not aware of any committees, no --

8 Q Or workgroups?

9 A No, no. Westchester asked us -- gave us a document that
10 asked for all the documentation that they wanted for the due
11 diligence, which I mean if you actually print it out might fill
12 this room. It was put on various slip drives, but it had
13 everything from our union contracts, to all the financials to
14 just, you know, every aspect of the organization, which we put
15 together and gave to them. But I'm not aware of any work
16 committees that have done anything other than put that
17 together.

18 Q Okay. And with respect to the letter of intent and the
19 anticipated definitive agreement, one element of the
20 affiliation with Westchester Medical Center would include the
21 consolidation of the Broadway and Mary's Avenue campuses?

22 MR. ESTOCK: I'm sorry, could you just repeat that last --

23 MR. VITALE: Sure. Let me restate it. For several years
24 now it has been the desire of Health Alliance to consolidate
25 their two campuses, correct?

1 THE WITNESS: Correct.

2 BY MR. VITALE:

3 Q The Kingston campus on one hand and the Benedictine campus
4 on the other?

5 A (No audible answer)

6 Q Correct?

7 A Correct.

8 Q I'm sorry, you're nodding.

9 A They've been renamed. It's Broadway campus and Mary's
10 Avenue campus --

11 Q Okay.

12 A -- but yes, those two facilities.

13 Q And I think at the previous hearing you testified
14 something to the effect of it doesn't make sense to have two
15 half empty hospitals, correct?

16 A Correct.

17 Q Alright. And isn't it true that the letter of intent is a
18 step towards consolidating those two campuses?

19 A It's -- I guess I would say yes. The issue is -- the
20 consolidation is necessary. Westchester looking at us agrees
21 with that so that, you know, us coming together just furthers
22 us moving down that line.

23 But it's the coming -- the consolidation of the two
24 campuses isn't really part of the discussion with Westchester.
25 If we're going to affiliate with Westchester operationally

1 going forward we think we need to be on one campus. So there's
2 obviously a linkage there, but one thing is not, you know,
3 absolutely to, you know -- well, critical to the other. What
4 we are part of is the DSRIP. We are part of the DSRIP.

5 Q I'm sorry.

6 A Sure.

7 Q Could we hold up for a second?

8 A Yeah, sure.

9 Q Because in the letter of agree -- letter of intent,
10 Employer 3, paragraph four talks about a definitive agreement.
11 "As a framework for their negotiations any definitive
12 agreements reached by the parties will be mutually acceptable
13 and will include the following". And in 4B, at the bottom of
14 page three it talks about H-H -- the Hudson -- "the Health
15 Alliance's intent (which is vital to its continued viability)
16 to consolidate its Mary's Avenue campus and Broadway campus at
17 the Mary's Avenue campus site." And that the consolidation --
18 and it continues, "the consolidation must occur as soon as
19 possible following receipt of necessary regulatory and other
20 approvals and that the consolidation will require funding of
21 approximately \$35,000,000", correct?

22 A Correct.

23 Q So in the letter of intent the parties Westchester Medical
24 Center and Health Alliance have indicated that as part of the
25 definitive agreement there is going to be this continuation

1 towards the consolidation.

2 A Right. That's what I said, that they agree with us that
3 this is the avenue to go for the future.

4 Q Okay.

5 A Exactly.

6 Q And with respect to the \$35,000,000 in funding, isn't it
7 true that Westchester Medical Center has agreed to provide or
8 at least tentatively provide some of that funding to have that
9 happen?

10 A No.

11 Q They're --

12 A Absolutely not.

13 Q -- not going to provide any of that funding?

14 A No. They -- where the funding is going to come through is
15 through the DSRIP application, which --

16 HEARING OFFICER TURNER: Can we get --

17 THE WITNESS: -- and we --

18 HEARING OFFICER TURNER: Sorry. Can we get some testimony
19 about what DSRIP is?

20 THE WITNESS: Sure.

21 HEARING OFFICER TURNER: Is that state money?

22 THE WITNESS: Yes, basically it's federal money that was
23 given to the state to transform healthcare in New York State.
24 It's -- we probably could be here hours getting into all of the
25 nuances of it, but each of many organizations, hospitals in New

1 York State applied for this DSRIP funding. At the urging of
2 the State, after we, Health Alliance, had put in an
3 application, as did Westchester, kind of indicated you guys
4 probably should go in with Westchester since you're talking
5 with them anyway. So we have become part of the Westchester
6 DSRIP application. So funding that would fund this and many
7 other things is all hinged upon getting allocation from that
8 DSRIP funding.

9 HEARING OFFICER TURNER: Okay. Who administers the
10 funding at the state level? Health department?

11 THE WITNESS: Department of Health.

12 HEARING OFFICER TURNER: Okay.

13 THE WITNESS: Yes.

14 HEARING OFFICER TURNER: Do you know what DSRIP stands
15 for?

16 THE WITNESS: I did.

17 HEARING OFFICER TURNER: But you don't know today?

18 THE WITNESS: Not today. It's --

19 HEARING OFFICER TURNER: Alright.

20 MR. ESTOCK: Yeah. We've got it. Somewhere in this room
21 there's a definition of it.

22 HEARING OFFICER TURNER: Okay.

23 THE WITNESS: Yeah.

24 HEARING OFFICER TURNER: This is money essentially for
25 plant closure, organizational change, streamlining or no?

1 THE WITNESS: It's to reconfigure how we deliver
2 healthcare. The goal is to reduce Medicaid admissions to the
3 hospitals over a five year period by 5% a year, a total of 25%.
4 Because again on a high level if you come into the hospital,
5 and we treat you, and it's \$1,000, if we can get you to the
6 clinic and they can do the same thing it's \$1.98. So the
7 Government is willing to fund that so that you don't have as
8 many Medicare -- excuse me, Medicaid people coming into the
9 hospital. So it's primarily based on that, but as part of that
10 you really do remake healthcare in a very profound way.

11 HEARING OFFICER TURNER: Service delivery?

12 THE WITNESS: Absolutely --

13 MR. VITALE: Okay.

14 THE WITNESS: -- service delivery.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. VITALE:

17 Q Well, and in fact does this refresh your recollection as
18 to what DSRIP stands for? Delivery System Reform Incentive
19 Payment Project?

20 A That's what it is.

21 Q Okay.

22 A I couldn't remember delivery system, yes.

23 HEARING OFFICER TURNER: Okay. Thank you.

24 BY MR. VITALE:

25 Q So it's all in the name? I mean --

1 A Yeah.

2 HEARING OFFICER TURNER: It's all in the name.

3 MR. VITALE: -- once you say the name you don't really
4 need any other --

5 HEARING OFFICER TURNER: I guess not. Okay.

6 BY MR. VITALE:

7 Q Okay. Alright.

8 A But back to your original question, my understanding is
9 Westchester, from their own point, has not committed or
10 indicated they are willing to fund any of this in any way.
11 It's hopefully through the DSRIP application.

12 Q Okay. And you are aware that Mr. Rabinowitz indicates in
13 his affidavit in paragraph six -- and I'll read it in its
14 entirety. "Unless and until a definitive agreement is reached
15 and the transaction closes WMC will have no control of or role
16 in HAHV management." And just so we're clear WMC is referring
17 to Westchester Medical Center and HAHV is referring to Health
18 Alliance of the Hudson Valley.

19 And then that paragraph continues "following the closing
20 if any of the affiliation proposal, WMC will look for ways to
21 achieve synergies, efficiencies and cost savings." You're
22 aware of that part of his affidavit, correct?

23 A I just read it with you.

24 Q Okay. And your -- you recall your earlier testimony on
25 December 8th that although you hadn't specifically quantified

1 the amount of cost savings that could be achieved through the
2 termination of Health Alliance's relationship with Nistel, that
3 there was some monetary cost savings that could potentially be
4 achieved through the termination of the relationship with
5 Nistel, correct?

6 A Correct.

7 Q And for reasons that we -- correct?

8 A Correct, yes.

9 Q And we're not going to rehash the reasons why you decided
10 not to realize those cost savings, but there were cost savings
11 that could potentially be achieved, correct?

12 A Correct.

13 Q In light of the letter of intent where -- and with respect
14 to the letter of intent it indicates that as part of the
15 definitive agreement, isn't it true that WMC would now be the
16 corporate member in control of the affiliated entities WMC and
17 HA -- Health Alliance?

18 A As I understand it part of what the attorneys on both
19 sides are working out, what that governing structure will look
20 like. So there's an option of what they call a passive parent,
21 which would mean that there's another entity that's formed. So
22 just call it new entity, that would have the responsibility for
23 naming the Health Alliance board. And by doing that then you
24 have obviously control over the organization. There has been
25 discussions where well, if your board has 20 people on it we'd

1 take 11 seats, you keep -- that way we've got -- they're in the
2 process of determining what that governing structure would look
3 like at this point.

4 HEARING OFFICER TURNER: Still being discussed presently?

5 THE WITNESS: Still being discussed. That's what we're
6 working for and what they're working towards by the end of
7 March to have in place so they're got a -- you know, they've
8 got it finalized.

9 BY MR. VITALE:

10 Q I appreciate that the details have not -- are still being
11 developed and worked on, but the end result -- the anticipated
12 end result is that it's no longer the Health Alliance current
13 board that will be controlling the future operations.

14 HEARING OFFICER TURNER: Of which --

15 MR. VITALE: It's either going -- of the -- either campus,
16 the Broadway campus or the Mary's Avenue campus. It will
17 either be a new entity, or it'll be a differently constituted
18 board of directors with people named from WMC, but the current
19 board will not have the control -- anticipated control in the
20 future, correct?

21 THE WITNESS: Not necessarily true.

22 BY MR. VITALE:

23 Q I'm sorry, you think one of the possibilities is that the
24 current board of directors --

25 A The current -- one possibility is the current board stays

1 in place. There is this other entity that's put over that
2 board, but then the current Health Alliance board would still
3 have the functioning that it has right now. There's another
4 entity above that.

5 Q I'm sorry. But so unlike today one of the anticipated
6 changes is in the future the Health Alliance current board may
7 have to answer to someone?

8 A Correct.

9 Q Alright.

10 A That would be a way of putting it.

11 Q Okay.

12 HEARING OFFICER TURNER: That's one possibility?

13 THE WITNESS: One possibility of --

14 MR. VITALE: Alright.

15 THE WITNESS: -- probably dozens.

16 MR. VITALE: Alright. And so in light of the prospect --
17 And I'm sorry, one other thing. Could you look at exhibit 4 --
18 Employer exhibit 4?

19 THE WITNESS: 4. Yes, I've got it.

20 BY MR. VITALE:

21 Q And just so we're clear this is the Health Alliance board
22 meeting on December 19th.

23 A Correct.

24 Q And on page three there's a president's report, correct?

25 A Correct.

1 Q And it actually has you, as the chief operating officer,
2 providing the report?

3 A Correct.

4 Q Do you see that? And there is a bullet for consolidation,
5 correct?

6 A Correct.

7 Q And they discussed reviewing architectural drawings, do
8 you see that?

9 A Correct.

10 Q And giving architects feedback in January?

11 A Correct.

12 Q Did that happen?

13 A It did.

14 Q Okay. Then the third bullet says "meeting with all
15 departments to discuss potential interim steps to conserve cash
16 prior to consolidation", right?

17 A Correct, right.

18 Q And I think consistent with your earlier testimony on
19 December 8th Health Alliance is always looking for ways it
20 could do things more cost efficiently, correct?

21 A Absolutely.

22 Q And that quest to save -- reduce costs continues today,
23 correct?

24 A Correct.

25 Q And whatever savings that might be realized, as a result

1 of consolidation, if there's a way to reduce costs before the
2 consolidation of the two campuses you're looking for ways to do
3 that, correct?

4 A Yes.

5 Q In light of the letter of intent that anticipates a
6 definitive agreement in which in some way, shape or form the
7 currently constituted board of directors of Health Alliance
8 will have to answer to someone -- who that someone is needs to
9 be determined -- has any of that made Health Alliance or Nistel
10 rethink their decision whether to remain in business as opposed
11 to forgo the -- you know, and -- or as opposed to let's recoup
12 some saving but --

13 MR. ESTOCK: Your question was whether Health Alliance
14 would continue in business.

15 MR. VITALE: No, I'm sorry --

16 MR. ESTOCK: That's what you said. That's why I stopped
17 you.

18 MR. VITALE: Oh, I'm sorry.

19 MR. ESTOCK: Because you mean Nistel I assume?

20 MR. VITALE: I meant Nistel. In light of everything that
21 we've now looked at in terms of the letter of agreement (*sic*),
22 what it contemplates, what Mr. Rabinowitz says that he's
23 looking to do, what you say you've always been looking to do in
24 terms of reduced costs, has any of that changed Health
25 Alliance's or Nistel's view as to Nistel continuing to provide

1 services to Health Alliance?

2 THE WITNESS: No, there has been no change in that
3 whatsoever at all.

4 BY MR. VITALE:

5 Q And without going into details, in light of everything
6 that's gone on with the letter of intent and desire to save
7 cash, and for whatever reasons it was that Health
8 Alliance/Nistel decided to rescind its WARN notices and to
9 maintain the steady course of Nistel will continue to provide
10 the services, you understand that NYSNA has suggested -- and I
11 won't go into the details, but suggesting -- suggested a change
12 to the effects bargaining that the parties had originally
13 contemplated?

14 HEARING OFFICER TURNER: Is this effects bargaining due to
15 --

16 MR. VITALE: With respect to the first Nistel notice.
17 When the first WARN note -- I'm sorry, the only WARN notice got
18 issued --

19 HEARING OFFICER TURNER: Okay.

20 MR. VITALE: -- the -- Nistel and the Union started to
21 engage in effects bargaining. And in light -- subsequent to
22 the letter of intent, the Union has renewed a proposal it made
23 about how that effects bargaining -- what would happen if
24 Nistel were to close, moderating its prior position. And I
25 won't go into the details of what the prior position was or

1 what the moderation is, but you are aware that subsequent to
2 the letter of intent being signed, NYSNA has indicated a
3 willingness to moderate its position on what would happen when
4 -- if and when Nistel were to close, correct?

5 THE WITNESS: Counsel has told me that they reached out to
6 him with that proposal --

7 BY MR. VITALE:

8 Q Okay.

9 A -- yes.

10 Q And despite that moderation and everything about the
11 letter of intent and the potential for having to answer to a
12 new entity, it is still Nistel's position to adhere to its
13 position to continue providing services to Health Alliance?

14 A Correct.

15 Q And it is still Health Alliance's position to continue to
16 ask Nistel to provide those services?

17 A Correct.

18 Q In connection with the due diligence you indicated that
19 Westchester Medical Center has, among other things, presented a
20 list of financial documents that it wanted to review?

21 A There was an extensive list of documentation, right, and
22 many of those were financial records.

23 Q Okay. And have -- and I assume Health Alliance provided a
24 response?

25 A Yep. Everything has been completed and given to them.

1 Q And the response was big enough to fill this room?

2 A It was -- I'm using a metaphor. Extensive documentation,
3 yes.

4 Q And have there been subsequent conversations about
5 particular aspects of the response?

6 A No.

7 Q Follow up questions?

8 A No, there -- if there were financial questions they would
9 have gone to like our chief financial officer, but as I
10 understand there have been no follow up questions. The -- most
11 of the documents are pretty self -- if they're asking, they're
12 pretty self explanatory. In other words I want the balance
13 sheet for the last three years. You know, kind of it is what
14 it is. So to my knowledge they haven't asked for any
15 clarifications or anything like that.

16 Q And I'm just asking, the request for financial documents,
17 does it get down to the level of how much are you paying for
18 toilet paper? How much are you paying for various -- to
19 various vendors?

20 A No. You're looking at a higher level. They did ask for a
21 list of all vendors. You know, in the purchasing document all
22 existing contracts.

23 HEARING OFFICER TURNER: Including --

24 THE WITNESS: You know, all those kind of things.

25 HEARING OFFICER TURNER: Including the Nistel contract?

1 THE WITNESS: Yeah, absolutely.

2 HEARING OFFICER TURNER: Okay.

3 THE WITNESS: They --

4 HEARING OFFICER TURNER: That's what we're here for,
5 right.

6 THE WITNESS: Absolutely, yeah. The Nistel contract, all
7 that, but there is nothing in what they'd asked for that would
8 get down to, you know, how much are you paying for --

9 MR. VITALE: Okay.

10 THE WITNESS: -- you know, a particular item.

11 BY MR. VITALE:

12 Q I got you. So -- and I'm sorry, the request for the --
13 who your vendors are, that was part of the due diligence?

14 A Correct.

15 Q That was part of the voluminous response?

16 A Right.

17 Q And so in part -- as part of that due diligence Health
18 Alliance has provided to Westchester Medical Center a list of
19 all its vendors, which would -- which includes Nistel?

20 A I would -- you know, I didn't look at that document. I'm
21 assuming it would have had to have had it. I didn't personally
22 look at it, but it's a vendor, so I would assume it's on there.

23 Q Okay. And do you have any understanding as to when that --
24 - was that production made on a rolling basis? As soon
25 something was gathered it was provided --

1 A No, they --

2 Q -- or you waited until you had a complete response and got
3 a truck to bring it over?

4 A They sent -- in the good old days it would have been a
5 truck. They sent the list of what they wanted. We broke the
6 list down by operations. You know, who -- in the operational
7 departments who would provide what.

8 It was all collected and then rather than print it out it
9 was put on slip drives. It would amount -- you know, amounted
10 to several drives. And then all of that was delivered to them
11 at once. And they didn't want it piecemeal. They wanted the
12 whole thing --

13 Q Okay. And do you know when that was that that slip drive
14 was provided?

15 A It was in January, but I don't know the exact date. If
16 it's important I could make a call and --

17 Q No, it's alright.

18 A -- find it, but -- they actually had requested -- in it,
19 when they made the request, the attorneys for the -- for
20 Westchester Medical Center, they -- there was a date they gave
21 there. We'd like all this by this date and we made the date
22 comfortably.

23 Q Okay. And so it's your understanding that if the response
24 included all vendors it would naturally include Health Alliance
25 -- I'm sorry, Nistel as one of Health Alliance's vendors,

1 correct?

2 A I'd sure hope so.

3 Q Alright. At the December 8th hearing we had -- at one
4 point you talked about nuts and bolts versus 20,000 foot --

5 A Uh-huh.

6 Q -- level. Did Westchester Medical Center's request for
7 information -- if we want to categorize tell me who your
8 vendors are at the 20,000 foot level and then give me all your
9 contracts with those vendors maybe at like the 10,000 foot
10 level, did they ask for any more specific information than just
11 the list of vendors and your contracts with them?

12 HEARING OFFICER TURNER: Do you know for certain whether
13 or not Westchester Medical Center has any documents in
14 connection with the Nistel -- do you know for certain if
15 Westchester Medical Center has any documents between --
16 agreements between Nistel and Health Alliance?

17 THE WITNESS: I do not know.

18 HEARING OFFICER TURNER: For certain?

19 THE WITNESS: For certain.

20 HEARING OFFICER TURNER: Alright.

21 THE WITNESS: I -- again --

22 HEARING OFFICER TURNER: But the agreement between the
23 parties --

24 THE WITNESS: -- any contracts --

25 HEARING OFFICER TURNER: -- should be there, right?

1 THE WITNESS: Right. They asked for all contracts.
2 Certainly there's a contract with Nistel. So I'm assuming that
3 would have had to go in with all the contracts, but I don't
4 know --

5 HEARING OFFICER TURNER: Okay.

6 THE WITNESS: -- that.

7 MR. VITALE: I'm sorry. So here's my question. So if one
8 of the questions Westchester Medical Center was asking as part
9 of its due diligence was identify vendors --

10 THE WITNESS: Uh-huh.

11 MR. VITALE: -- and another question was provide copies of
12 the contracts you have with these vendors, did they ask for any
13 more specifics such as costing or dollar amounts associated
14 with these various vendors?

15 THE WITNESS: No, not to my knowledge.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. VITALE:

18 Q No. And the Roman numeral four, president's report,
19 starts at the -- towards the bottom of page two --

20 A Uh-huh.

21 Q -- and it was given by you, correct?

22 A Correct. For that piece of the report. Every VP gives
23 their own piece.

24 Q Okay. And there is a -- I guess maybe the last bullet
25 point on what you presented was -- the last bullet point was

1 consolidation in the middle of page three?

2 A Right.

3 Q And it talked about RFPs being prepared for architect,
4 engineering study, construction manager and three branch
5 electrical contractor. That's all in connection with the
6 consolidation of the Broadway campus into the Mary's Avenue
7 campus, correct?

8 A It's reconfiguring the Mary's Avenue campus to be able to
9 accommodate everything on Broadway plus what's already there.

10 Q Okay. What is the current state of the RFPs? Have they
11 gone out?

12 A The RFPs for the construction manager have gone out.
13 We've done preliminary interviews on those and we're making the
14 final -- having the finalist come in for an interview next week
15 in anticipation of making a selection.

16 HEARING OFFICER TURNER: Tell me again where is Nistel
17 located geographically? It's not on either campus is it?

18 THE WITNESS: You know, I don't even know. Where are your
19 offices?

20 MR. VITALE: No. I fact I do know this from a different -
21 - it's actually -- it's offices are on neither of the campuses.

22 HEARING OFFICER TURNER: Okay.

23 MR. ESTOCK: Right.

24 MR. VITALE: It's --

25 HEARING OFFICER TURNER: Alright. Okay. So it's --

1 MR. ESTOCK: They're across town.

2 HEARING OFFICER TURNER: Yet a third place. That's what I
3 thought.

4 MR. VITALE: And just off the record for a second?

5 HEARING OFFICER TURNER: Yes. Go off the record.

6 (Whereupon, a brief recess was taken)

7 HEARING OFFICER TURNER: Back on the record.

8 My only purpose -- just to the record is clear, my only
9 purpose in asking that last question is to determine whether or
10 not Nistel's facilities are actually being reconfigured with
11 the possibility of being closed down. And it doesn't appear
12 they are to your knowledge, right?

13 THE WITNESS: No, not at all.

14 HEARING OFFICER TURNER: Okay.

15 THE WITNESS: Matter of fact the surgery --

16 HEARING OFFICER TURNER: Oh, I'm sorry. Go ahead, Mr.
17 Estock had --

18 MR. ESTOCK: Just in clarification. I don't know if we
19 need to be on the record or off, but Nistel's workplaces, you
20 know, where their employees go, are obviously our places.

21 HEARING OFFICER TURNER: Oh, they -- okay.

22 THE WITNESS: The operating rooms. And --

23 HEARING OFFICER TURNER: Okay, thank you.

24 THE WITNESS: -- to that point the -- one of the things
25 we're working on --

1 MR. ESTOCK: Are we on the record or --

2 HEARING OFFICER TURNER: We're on the record.

3 MR. ESTOCK: Okay, thank you.

4 HEARING OFFICER TURNER: That's good --

5 MR. ESTOCK: Good enough, good enough.

6 HEARING OFFICER TURNER: Okay.

7 THE WITNESS: One of the things that we're doing is we're
8 going to be adding some surgical suites to hopefully handle
9 increased surgical volume, which is what the Nistel nurses do.
10 So --

11 HEARING OFFICER TURNER: Okay.

12 THE WITNESS: -- the exact opposite in essence of happing.
13 You know, we're hoping to have more surgical volume.

14 HEARING OFFICER TURNER: Okay.

15 MR. VITALE: I have no further questions.

16 HEARING OFFICER TURNER: Alright. Mr. Estock?

17 CROSS EXAMINATION

18 BY MR. ESTOCK:

19 Q Mr. Marsicovete, tell us how long you've been at Health
20 Alliance, just so we have a viewpoint.

21 A Coming up on this summer will be five years. So it's four
22 and three quarter years or --

23 Q And the counsel talked to you about the consolidation of
24 the two campuses, the main campuses --

25 A Uh-huh.

1 Q -- Mary's Avenue and Broadway, formerly Benedictine and
2 Kingston Hospital. How long has that been going on, the issue
3 -- the consolidation of the campuses?

4 A Well, to be honest there were probably discussions about -
5 - going back maybe, and I'm only estimating, 20 years or so,
6 because it was becoming apparent over a course of time that the
7 two entities, when they were totally separate, couldn't -- you
8 know, couldn't continue to exist. So then when the Berger
9 Commission came along, decided that they needed to merge, the
10 idea was if they actually were under one corporate parent,
11 Health Alliance -- so each one has their separate operating
12 number, but if they were under one parent might it be possible
13 to save both?

14 And that's really what Health Alliance was formed to do.
15 It became very apparent, after Health Alliance formed, within a
16 couple of -- maybe a year or two that that was not going to
17 work. And then we began to explore ways of creating --

18 Q To seriously --

19 A -- one campus.

20 Q -- explore?

21 A Yeah, right.

22 Q The Health Alliance was formed -- actually it was formed
23 in a -- as I recall, a holding company of some sort. And that
24 was back in the 2008-2009 period. The -- just for the reader
25 of the record, the Berger report was a New York State

1 Commission charged with finding out if there are excess beds
2 and excess facilities in various areas of the state, was it
3 not?

4 A Correct.

5 Q They --

6 A Yeah, closing unnecessary beds and consolidated health
7 care.

8 Q And they issued a report, if my memory serves me, it was
9 back in 2005 or so?

10 A Uh-huh, somewhere --

11 Q And the --

12 A -- back there.

13 Q -- recommendation was that the two separate facilities
14 join somehow?

15 A Yeah. Basically, it came down to a simple thing, either
16 you guys -- they've been trying to talk about a merger for
17 again, 20-25 years or -- in essence either you guys figure out
18 a way to make this happen or one of you is going to close. And
19 with that they figured out how to come together.

20 Q So right now how important is consolidation to Health
21 Alliance's future?

22 A Critical. If -- based on the operating losses we've had
23 in the last couple years and what's projected, if we do not get
24 to one campus -- and the models we have show that at one campus
25 we could be -- we're a non-profit, but to use the word

1 profitable, we would be, you know, keeping our head above
2 water. If we don't do that within two years we'll be out of
3 business.

4 Q Okay. So let's assume for the moment that the
5 consolidation that being worked on doesn't happen. What does
6 that do to the consolidation (sic) of the two campuses?

7 A You mean the affiliation --

8 Q The affiliation.

9 A -- doesn't happen?

10 Q I'm sorry.

11 A Right.

12 Q I said consolidation. Scratch that. I'll rephrase it.

13 A If --

14 Q What happens --

15 HEARING OFFICER TURNER: Let him ask the question again.

16 MR. ESTOCK: Let me rephrase it. If the affiliation
17 efforts don't work for whatever reason what becomes of the
18 consolidation project?

19 THE WITNESS: We have to figure out a way to move forward
20 with it. Again, while we're -- and this is -- it gets very
21 complicated. We are part of the Westchester DSRIP application.
22 Suppose, as part of the due diligence, Westchester looks at
23 this and goes, you know, guys, second thought we really don't
24 want to do this, we're still part of their application. That
25 doesn't change.

1 BY MR. ESTOCK:

2 Q But that's the money, the issue?

3 A That's the money. What I'm saying is the money could
4 still come through the DSRIP application to do the
5 consolidation even if the affiliation didn't happen in theory.
6 The other thing is let's suppose the state gave us no money,
7 knowing that we have to figure out how to do that, and so we
8 would have to -- while it wouldn't be very pleasant, to be
9 honest with you, we would have to figure out how to get to one
10 campus without doing any modifications. And the results of
11 that would be somewhat draconian, but we would have no choice
12 but to do it. And that would mean curtailing services, and
13 cutting things and doing things we don't want to have happen.

14 Q Well, let's turn to the issue of conservation of money.
15 Counsel asked you -- pointed out that that was one point that
16 was made in the minutes; that we have to conserve money. And
17 that after he listed a number of factors he asked whether that
18 changed your outlook on closing Nistel and you said words to
19 the effect of no, not at all. So let me ask you the question
20 that's on everybody's mind. Why not?

21 A Because, you know, and again hypothetically even if a new
22 entity came in Westchester, and someone from Westchester, an
23 executive or someone called -- and which is a little bit --
24 probably doesn't happen, because they're talking on a board
25 level. And I -- in my 30 years of experience working with

1 boards I've never had a board come to me and tell me do that
2 and do that. They're concerned with a much bigger picture.

3 But hypothetically so that happened, I would explain the
4 same thing, assuming they're good business people, look, the
5 amount of money we would save is miniscule compared to the
6 disruption that, you know, closing it down caused, number one.
7 Number two, in going forward we believe there are going to be
8 opportunities. Because of the way healthcare is going to
9 change Nistel could be perfectly positioned to provide nurses
10 for perhaps surgicenters, because you're not going to bring
11 people into the hospital as much. They could be --

12 HEARING OFFICER TURNER: So what are these --

13 THE WITNESS: -- positioned --

14 HEARING OFFICER TURNER: -- offsite clinic --

15 THE WITNESS: Offsite. Yeah, surgicenters, offsite. So
16 they could be perfectly positioned perhaps to even provide
17 nursing for them. So at this point, in our judgment -- my
18 judgment is that there would be no reason to close them down.

19 HEARING OFFICER TURNER: Wait and see?

20 THE WITNESS: To wait and see.

21 MR. ESTOCK: Now --

22 THE WITNESS: And going back to the -- also the notion
23 wait and see if a good way of putting it. Even if a letter --
24 a final agreement is signed, here's the other issue. It still
25 has to be approved by the Department of Health. Now --

1 HEARING OFFICER TURNER: The whole transaction?

2 THE WITNESS: The whole transaction.

3 HEARING OFFICER TURNER: Okay.

4 THE WITNESS: We're hoping that goes very quickly. We're
5 talking to people. That could take months or years. Also, if
6 it's determined that the Federal Trade Commission has to opine
7 on this and again we're hopeful no, but they could --

8 BY MR. ESTOCK:

9 Q The federal -- excuse me --

10 A Federal Trade Commission.

11 Q Federal Trade Commission would look at it from a
12 standpoint of --

13 A Restraint of trade.

14 Q -- restraint of trade.

15 A In other words if you guys are coming together you're
16 restraining trade. Two hospitals across the river from us who
17 were thinking of joining took a year to get a FTC review. And
18 they eventually told them no, you can't, because it would be a
19 restraint of trade.

20 So if they were to look -- if they have to look at it, it
21 could take a year or years to look at. So the fact that we're
22 aiming at March that, you know, we hope to have an agreement in
23 place, I have no idea how long the regulatory approval process
24 would be. And again, that speaks to this imminent idea. There
25 is no imminent thing about us closing Nistel.

1 Q Is there any -- but has there been any change in at least
2 Health Alliance's position regarding closing Nistel?

3 A No. We firmly -- once we determined that because of all
4 the disruption that the closing was causing, the nurses wanting
5 to have an election -- I think I testified to this before, it
6 seems kind of strange, but as a management team we're saying we
7 believe our nurses have the right to be heard, and hold an
8 election and decide it. If they want a union by God we'll
9 negotiate in good faith.

10 HEARING OFFICER TURNER: And you did testify about this
11 previously.

12 THE WITNESS: Right.

13 HEARING OFFICER TURNER: So let's --

14 THE WITNESS: Okay.

15 MR. ESTOCK: Okay.

16 HEARING OFFICER TURNER: Okay.

17 BY MR. ESTOCK:

18 Q So then let's move to another question that was put to you
19 on direct. You sent, for example, the vendors' information in
20 and you're assuming, but reasonably so, that in that collection
21 of vendors went the Nistel contract, but you're not sure?

22 A Yeah, I --

23 Q And -- but --

24 A -- didn't assemble the documents. So I don't know.

25 Q Right. Understood. You making an assumption based on

- 1 what due diligence usually incorporates --
- 2 A If we --
- 3 Q -- I assume?
- 4 A Right. If we left it out we didn't do a good job.
- 5 Q And when -- and that was sent to Westchester Medical
- 6 Center in January you said?
- 7 A Sometime in January --
- 8 Q And --
- 9 A -- to their attorneys that were collecting it.
- 10 Q And I don't know whether you're talking about financial
- 11 records only or entire records that would, if printed out, fill
- 12 this room --
- 13 A No, it wasn't just financial. It was, again, everything
- 14 you --
- 15 Q Everything.
- 16 A -- could possibly think about the organization.
- 17 Q Would you take a look at Mr. Rabinowitz's affidavit?
- 18 That's Union exhibit 17. And I'd like to direct you to
- 19 paragraph four. Just so it's in the record would you read that
- 20 section four for us?
- 21 A "Westchester Medical Center was unaware of any
- 22 relationship between Health Alliance of the Hudson Valley and
- 23 Nistel, Incorporated, prior to the receipt of the February 9th
- 24 2014 subpoena."
- 25 Q And that's a subpoena in this proceeding of course?

1 A Right.

2 Q Alright. So it appears that at least as of the date of
3 February 9th they hadn't gotten around to reviewing all of the
4 due diligence?

5 A No, obviously. And in any discussions we've had and they
6 -- their management team has been up to see us, various
7 components of it several times, the subject of Nistel has never
8 come up once in any conversations I was part of or that I
9 understand other people have had. They really didn't know
10 anything about it. And obviously the affidavit supports that.

11 Q If I can ask you to stay with me on Union exhibit 17 --

12 A Uh-huh.

13 Q -- the affidavit of Mr. Rabinowitz? I draw your attention
14 to paragraph five of the affidavit. And it reads "although, as
15 its corporate member, Westchester Medical Center would manage
16 Health Alliance after closing if any of the transaction,
17 section 4HI of the letter of intent anticipates that HAHV would
18 continue its human resource function, and its day to day
19 supervision of employees, as well as labor relations,
20 collective bargaining functions." Do you agree with that? Is
21 that your understanding?

22 A Absolutely. All the discussions that I have personally
23 been part of or had been told about indicate that Westchester -
24 - and my terminology, not anybody else's. They're not
25 interested in managing Health Alliance on a day to day basis.

1 They've got enough trouble managing their own hospital, right?

2 They view this alliance as beneficial on a number of
3 various levels, which are in the -- if you look at the letter
4 of intent, you know, the idea of, you know, enhancing some of
5 our capabilities up here, their referral patterns down to them.
6 You know, there are benefits.

7 There has been no discussion at all about them becoming
8 involved in the day to day actual managing of the operation.
9 Now, clearly as they become the corporate parent it's their
10 option to decide, you know, what might happen in the future,
11 but that's -- it would be speculation. But there has been no
12 indication in any discussion that they're interested in getting
13 down on a day to day management details.

14 Matter of fact, they've even -- their president, their
15 chief operating officer, several of their key people came up
16 and spent a day with us. Kind of a meet and greet. And we
17 walked around the Mary's Avenue facility and took a tour.

18 And throughout both the formal and informal part of that
19 lunch there was a lot of indication about they're very
20 supportive. They like the direction we're going in. They look
21 forward to working with us. You know, and very much of a kind
22 of hey, you guys are going to manage your day to day operation.
23 That's why you're here.

24 Q Does Mr. Rabinowitz's paragraph five -- is that reflected
25 in any way, to your knowledge, in the letter of intent?

1 A I believe it's taken -- the part about where it refers to
2 section 4H, that's right from the letter of intent. So it was
3 put -- in the letter of intent it was actually put in that the
4 final agreement would anticipate that Health Alliance is
5 responsible for all of its human resource functions and any
6 labor negotiations and so on. It's taken right from the letter
7 of intent.

8 HEARING OFFICER TURNER: This is 4H single I you said?

9 THE WITNESS: Yeah.

10 MR. ESTOCK: That's found on -- by the way, on page five
11 about the middle of the page of the exhibit, Employer's exhibit
12 3.

13 THE WITNESS: And that's very consistent with what we're
14 being told; them expecting us to manage our day to day
15 business.

16 MR. ESTOCK: I have no further questions.

17 HEARING OFFICER TURNER: Ms. Lydecker, any for you?

18 MS. LYDECKER: No.

19 HEARING OFFICER TURNER: Okay. Mr. Vitale, anything on
20 cross (*sic*)?

21 MR. VITALE: Yes.

22 REDIRECT EXAMINATION

23 BY MR. VITALE:

24 Q Well, with respect to that last point about Westchester
25 Medical Center, it's anticipated that Hudson -- I'm sorry,

1 Health Alliance would continue to do the day to day
2 administration. Isn't it true though that -- I mean day to day
3 administration with any budget that Health Alliance chooses or
4 consistent with the budget that the corporate parent has
5 adopted?

6 A Consistent. Well, obviously anything is consistent with
7 the budget.

8 Q Right. I mean in terms of -- to the extent that Health
9 Alliance is going to be engaged in collective bargaining --

10 A Uh-huh.

11 Q -- they're not going to show up with whatever bag of money
12 they want, right? They're going to have to decide -- the
13 corporate parent is going to tell them the bag of money that
14 they're authorized to spend, correct?

15 HEARING OFFICER TURNER: If you know.

16 THE WITNESS: I -- you know, depending on how the --
17 again, depending on how the corporate governing structure is
18 set up. I don't know whether they're going to be directly
19 involved in the budget. If they have that passive parent all
20 they're doing is deciding who sits on the board. They're not
21 deciding the operating budget of Health Alliance.

22 HEARING OFFICER TURNER: And none this has been concluded
23 yet, right?

24 THE WITNESS: None of this has been concluded yet.

25 BY MR. VITALE:

1 Q Okay. You talked about -- when Employer counsel asked
2 essentially why is it that Health Alliance has not changed its
3 mind about the continued use of Nistel, you talked about these
4 offsite surgical centers?

5 A Potentially --

6 Q Potential.

7 A Right.

8 Q I got you. But you don't need Nistel to provide those RNs
9 to offsite surgical centers, right? I mean if the -- I'm
10 sorry. If the nurses went to the direct payroll of Kingston or
11 to the direct payroll of Benedictine then it would be the RNs
12 paid by Benedictine who were going offsite -- potentially going
13 offsite and providing the surgical centers, right?

14 A Could be.

15 Q Alright. And then finally you talked about -- you know,
16 again in response to a question posed by counsel on his cross,
17 you know, you talked about well, you're sticking to your
18 original decision because the nurses want to have a say, but
19 the NYSNA has agreed that part of the closing could be nurses
20 decide which facility they go to. Isn't that giving nurses a
21 say?

22 A Perhaps, but the nurses originally, way back I believe --
23 and we have somebody in the room here that could give more
24 detail. That was proposed to the nurses way back in October or
25 way, way back and the nurses themselves said no, that's not

1 what they wanted to do. It's -- so that --- that's what the
2 fact is.

3 Q I'm sorry, your understanding is that in October of 2014
4 the notion was suggested to the nurses of Nistel closing and
5 the nurses of Nistel picking whether they go to Kingston or to
6 Benedictine?

7 A That is --

8 Q And --

9 A -- my understanding.

10 Q And your understanding is that that wasn't going to be
11 sufficient?

12 A Correct.

13 Q And that understanding is based upon?

14 A Discussion with Lisa who is sitting right here.

15 HEARING OFFICER TURNER: Ms. Lydecker?

16 THE WITNESS: Ms. Lydecker.

17 HEARING OFFICER TURNER: Right. Okay. I just want to
18 make we -- which Lisa we're talking about.

19 MR. VITALE: I have no further questions.

20 HEARING OFFICER TURNER: Anything further?

21 MR. ESTOCK: Just one further.

22 RECROSS EXAMINATION

23 BY MR. ESTOCK:

24 Q The proposal on -- that NYSNA submitted, in fact that was
25 in the form of a flier that went out to all Nistel RNs,

1 possibly others, but to the Nistel RNS presenting the option to
2 them in writing from NYSNA?

3 A I have to be honest, Howard --

4 Q Don't remember?

5 A -- I don't remember.

6 Q If you don't -- okay.

7 A I really -- so many things have gone on, but I really
8 don't. I do remember hearing about it, but I don't remember
9 the vehicle.

10 MR. ESTOCK: No further --

11 HEARING OFFICER TURNER: Anything else?

12 MR. ESTOCK: No.

13 HEARING OFFICER TURNER: Ms. Lydecker, anything? Okay.

14 MR. VITALE: No.

15 HEARING OFFICER TURNER: No? Okay. You're excused, sir.

16 Thank you very much. Thank you. Does either party have any
17 additional witnesses it would like to call?

18 MR. VITALE: No.

19 HEARING OFFICER TURNER: No?

20 MR. ESTOCK: Can I have a moment?

21 HEARING OFFICER TURNER: Yes, let's go off the record,
22 please.

23 (Whereupon, a brief recess was taken)

24 HEARING OFFICER TURNER: On the record.

25 Mr. Estock, you have a witness you'd like to call?

1 MR. ESTOCK: Yes. And with discussions with counsel he
2 suggested that I make a proffer.

3 HEARING OFFICER TURNER: Let's not. Let's just call her
4 and let's see what she has to say. And then I can rule on the
5 questions as it comes and then --

6 MS. LYDECKER: Can I bring my phone with me? Because
7 there's information on there.

8 HEARING OFFICER TURNER: Ah.

9 MR. ESTOCK: Why don't you do it without --

10 HEARING OFFICER TURNER: Let's try --

11 MR. ESTOCK: -- the phone and if you need it --

12 HEARING OFFICER TURNER: -- going from memory here, only
13 because we all can't look at your phone and we might all want a
14 record of it. But anyway please raise your right hand.
15 Whereupon,

16 LISA LYDECKER

17 Having been first duly sworn, was called as a witness and
18 testified herein as follows:

19 HEARING OFFICER TURNER: Okay. Please have a seat. And I
20 don't recall you testifying in the first hearing --

21 MR. ESTOCK: No --

22 HEARING OFFICER TURNER: -- although I didn't do that --

23 THE WITNESS: This is the first time.

24 HEARING OFFICER TURNER: -- but if you could state and
25 spell your name for the record and then we'll get started?

1 THE WITNESS: Lisa Lydecker, L-I-S-A L-Y-D-E-C-K-E-R.

2 HEARING OFFICER TURNER: Okay. Thank you. Go ahead, Mr.
3 Estock.

4 DIRECT EXAMINATION

5 BY MR. ESTOCK:

6 Q Ms. Lydecker, you're a registered nurse?

7 A I am.

8 Q You work for Nistel?

9 A Yes.

10 Q And you are the Petitioner in this matter?

11 A That is correct.

12 Q Okay. In previous testimony an issue came up with regard
13 to an offer made by NYSNA with regard to the Nistel nurses that
14 if Nistel closed they would get to choose which facility they
15 went back to. Are you familiar with that offer and the
16 concept?

17 A I am.

18 Q Now, my direct question is this: was there any circulars
19 or letters circulated among Nistel nurses, to your knowledge,
20 that contained that offer to the -- and projected to the
21 nurses?

22 A It came from NYSNA and it was circulated to the Nistel
23 nurses from NYSNA.

24 MR. ESTOCK: Thank you. That's all I have.

25 HEARING OFFICER TURNER: Mr. Vitale, anything?

1 MR. VITALE: No further questions.

2 HEARING OFFICER TURNER: You're excused. Thank you very
3 much. And that's all. Does any party have any additional
4 witnesses it wishes to call?

5 MR. ESTOCK: No, I do not. I just -- for purposes of the
6 record I'm not sure I mentioned on the record before that there
7 is a representative from Nistel here. Both sides apparently
8 have decided not to call her for testimony.

9 HEARING OFFICER TURNER: Alright. Mr. Vitale, you have
10 any witnesses you'd like to call including the -- Ms. Rodriguez
11 in the back?

12 MR. VITALE: I will only snarkily observe that I have tons
13 of questions all of which I think would be ruled objectionable.

14 HEARING OFFICER TURNER: Well --

15 MR. VITALE: So I will not call -- I have no questions of
16 the witness.

17 HEARING OFFICER TURNER: I --

18 MR. VITALE: No further witnesses at this time.

19 HEARING OFFICER TURNER: No further witnesses. Ms.
20 Lydecker, do you have any additional -- any witnesses or
21 testimony you'd like to put on?

22 MS. LYDECKER: I have no witnesses, but I would like to
23 make a statement if we are at our closing.

24 HEARING OFFICER TURNER: That's fine. We're just about at
25 the closing. And if you'd bear with me for one moment. I'm

1 assuming no party would like to modify its position based on
2 the testimony we've heard today?

3 MR. VITALE: That is correct.

4 HEARING OFFICER TURNER: No? Okay.

5 MR. ESTOCK: Safe assumption.

6 HEARING OFFICER TURNER: Safe assumption. If I have not
7 received any of the exhibits offered at the hearing I'll
8 receive them now. They were all offered and I distinctly
9 remember receiving them.

10 MR. ESTOCK: Uh-huh.

11 HEARING OFFICER TURNER: Would the parties like to present
12 oral arguments in lieu of briefs? And I'll start with Mr.
13 Estock, because he said he -- at the outset that he would like
14 to do that.

15 MR. ESTOCK: Yes.

16 HEARING OFFICER TURNER: Okay. Please go ahead, Mr.
17 Estock --

18 MR. ESTOCK: Well --

19 HEARING OFFICER TURNER: -- and then we'll go around the
20 room.

21 MR. ESTOCK: -- I will do so, but I don't want to do so if
22 we're also going to have briefs.

23 HEARING OFFICER TURNER: Okay. So that's fine. Let me
24 ask you -- let's go more slowly then.

25 MR. VITALE: I --

1 HEARING OFFICER TURNER: Would any party like to waive
2 their right to file briefs?

3 MR. VITALE: NYSNA will not waive that right.

4 HEARING OFFICER TURNER: Okay. I understand.

5 MR. ESTOCK: Then I'll preserve my right.

6 HEARING OFFICER TURNER: You'll reserve your right. Ms.
7 Lydecker, you do wish to make a statement on the record --

8 MS. LYDECKER: That is correct.

9 HEARING OFFICER TURNER: -- you indicated to me? Please
10 go ahead.

11 MS. LYDECKER: Okay. Dear Ms. Ley, Regional Director, I
12 am addressing this hearing board today for myself and the other
13 Nistel RNs I work with in the surgical services department at
14 both campuses of Health Alliance. In May of 2014 I contacted
15 The National Labor Relations Board in Albany about how to
16 decertify a union. I was given instructions through their
17 website and any questions I had were answered by the Albany
18 branch of the NLRB.

19 The petition was filed and in June of 2014 the 44 surgical
20 services RNs waited to find out when we could vote to
21 decertify. During this period of time we continued to pay our
22 union dues of \$34.69, which started on August 11th of 2012. In
23 July of 2014 the dues went up and in my last paycheck I am
24 paying \$34.81.

25 Multiple delays occurred and still we waited to find out

1 when we could vote, still paying dues for a union that has done
2 not one thing for the surgical services nurses since they came
3 to be in 2012. Finally, after appeals were exhausted, so we
4 thought, a vote date in November of 2014 was given, but even on
5 the vote date appeals were filed again by the Union and our
6 votes were impounded.

7 There are 44 RNs in the surgical services unit. 42 RNs
8 came out to vote on that day. One RN was sick and one RN was
9 out of the country.

10 We, the nurses of the surgical services unit of Health
11 Alliance, appealed to The National Labor Relations Board to
12 allow our voices to be heard. In good faith with a belief in
13 the system we signed a petition to decertify the Union. We
14 continued to pay our dues and even with just counting only
15 December, January and February dues, the surgical services
16 nurses have paid over \$9,000 for absolutely nothing. Vassar
17 surgical nurses pay union dues and get their medical insurance
18 paid for.

19 And still we wait. Our vote was in November of 2014 and
20 it is now February of 2015. To say that we are disappointed is
21 an understatement. Even if we do open the box and the vote
22 goes the way I want, none of the RNs will get any money back.
23 Talk about a cash cow.

24 The legal fees this must be costing the Health Alliance
25 and us, yes us, the RNs, as our dues are paying for the Union's

1 lawyer and appeals, are not acceptable. These appeals could
2 continue on indefinitely as long as the Union does not like the
3 NLRB decision. Appeal after appeal indicates that the Union
4 has not proved their stand and these are just delaying tactics
5 to squeeze as much money from the RNs as possible.

6 I remember a phone call I had in the fall of 2014 with
7 Peggy Bachman, union rep, telling me that NYSNA had the money
8 and resources to fight the decertification for however long it
9 takes. With all the delays the Union will be right, Nistel
10 will close, because by the time all appeals are exhausted five
11 years or more will have passed. I am respectfully imploring
12 the board to please make a final, be all that ends all decision
13 and allow the box to be opened and to allow our votes to be
14 heard. Thank you.

15 HEARING OFFICER TURNER: Thank you. Would any party like
16 to add a -- I've asked --

17 MR. VITALE: No.

18 HEARING OFFICER TURNER: -- you before, but you're not --
19 okay. So that's fine. Okay.

20 MR. ESTOCK: We're one the record --

21 HEARING OFFICER TURNER: Yes, we are.

22 MR. ESTOCK: -- right? I need to ask a question. I need
23 to ask, because I don't remember under the Board rules if I
24 make a closing statement now it forecloses me from filing a
25 brief.

1 HEARING OFFICER TURNER: I have to admit I'm not familiar
2 with -- I have -- I'm ruling today that I have no objection if
3 you do both --

4 MR. ESTOCK: I don't --

5 HEARING OFFICER TURNER: -- or neither.

6 MR. ESTOCK: Nobody has any objection if I --

7 HEARING OFFICER TURNER: So I have no objection if you
8 would like -- either of the two parties who did not make
9 closing statements, if you'd like to say something within
10 reason and briefly you're encouraged to do so.

11 MR. ESTOCK: Well, I'll make my statement and take my
12 chances that the Board won't foreclose me if I decide to file a
13 brief. My statement is going to be very brief. We've had
14 three days of hearing. We have had two sets of subpoenas.
15 Well, one set from Health Alliance's standpoint and one
16 agreement to provide documents.

17 We've provided a fair amount of documents, I think
18 completely meeting the requests of the Union for information.
19 We've gone through a number of witnesses both the Union's, and
20 Health Alliance's and then the Petitioner. Throughout that
21 there has been, in my mind, not a scintilla of information, or
22 facts or evidence that would show that a decision to close
23 Nistel is imminent or certain. I mean I believe that to be a
24 common sense conclusion that any reasonable person would draw.

25 Our -- you've heard Health Alliance's witness Mr.

1 Marsicovete say there's no plan to close in the foreseeable
2 future. I'll join Ms. Lydecker in saying that if the Union
3 does -- continues to do its excellent job of managing to delay
4 this proceeding, yes, something is bound to happen at some time
5 or another. Maybe it's the five years, maybe it's -- my point
6 is this: we have exhausted all possible investigative avenues
7 into the question of is a closing of Nistel imminent, is it
8 certain. It seems to be not.

9 Even were the Board to take a newly adopted broader look
10 at this, it isn't even certain in the foreseeable future that
11 Nistel is going to close. So for that reason I believe the
12 Regional Director, for the reasons she stated both in her
13 supplemental order, and the Assistant Regional Director's
14 original decision herein and now the cases cited therein, to
15 direct that the ballots be counted. Thank you.

16 HEARING OFFICER TURNER: Okay. Thank you. Mr. Vitale?

17 MR. VITALE: I'm not willing --

18 HEARING OFFICER TURNER: Safe?

19 MR. VITALE: -- to run the risk that saying something in
20 closing precludes my ability to file a --

21 HEARING OFFICER TURNER: Okay. Alright. I've never read
22 that it would. Never encountered the --

23 MR. VITALE: Oh, I'm going to --

24 HEARING OFFICER TURNER: -- situation either.

25 MR. VITALE: -- give Howard a piece of my mind off the

1 record --

2 HEARING OFFICER TURNER: Alright.

3 MR. VITALE: -- but I'm not going to do it on the record.

4 HEARING OFFICER TURNER: That's fine. Read this into the
5 record. The parties may make arrangements with the reporting
6 service to obtain the transcript of this proceeding on an
7 expedited basis. Requests for extensions of time to file
8 written post-hearing briefs based upon a delay or the non-
9 receipt of transcripts will be denied if the parties requesting
10 such an extension have not availed themselves of this option.
11 In the event the parties decide to submit written post-hearing
12 briefs they should be received by the close of business next
13 Friday, February 27th 2015. And if there's nothing further the
14 hearing will be close.
15 (Whereupon, at 12:41 p.m. the hearing in the above-entitled
16 matter was closed)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

NISTEL, INC.,

Respondent,

And

LISA LYDECKER,

Petitioner,

And

NEW YORK STATE NURSES ASSOCIATION,

Union.

Case No.: 03-RD-130926

Date: February 20, 2015

Place: Albany, NY

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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